NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI

(APPELLATE JURISDICTION)

IA No. 361/2021
in
Company Appeal (AT) (CH) (Ins) No.177 /2021
(IA Nos. 360 & 362 / 2021)

In the matter of :

Southern Power Distribution
Company of Telangana Ltd.
6-1-50, Mint Compound, Lakdikapool,
Hyderabad, Telangana - 500004 … **Applicant / Appellant**

V

1. Kalvakolanu Murali Krishna Prasad
Resolution Professional for
Vaksh Steels Pvt. Ltd.,
H. No. 8-27, Plot No. 106,
Mythripuram Colony,
Jillelaguda, Vyshalinagar P.O.
Hyderabad

2. Committee of Creditors of Vaksh Steels Pvt. Ltd.
Through K. Murali Krishna Prasad,
Resolution Professional
H. No. 8-27, Plot No. 106,
Mythripuram Colony,
Jillelaguda, Vyshalinagar P.O.
Hyderabad

3. SVSS Commercial Pvt. Ltd.
3-4-484/3/4/5, Flat No. 302,
MBR Residency, Baghlingampally,
Opp. Reddy Womens College,
Kachiguda, Hyderabad **… Respondents**

Present:

For Appellant : Mr. T.K. Bhaskar, Advocate
For Mr. Adithya Reddy, Advocate

For Respondents : Ms. Devangi, PCS
For Mr. Y. Suryanarayana, Advocate for R2

O R D E R
(Hybrid Mode)

Oral Judgment : Justice Sharad Kumar Sharma, Member (Judicial):

1. This Company Appeal dwells around a very peculiar circumstances, which is rarely found to be made as a subject of adjudication, and that too on a limited question of determination of the aspect of limitation, for the purposes of Company Appeal.

2. The facts are that, the Appellant to the Company Appeal, has preferred this Appeal, being aggrieved as against the Impugned Order of 31.01.2020, as it has been passed in IA/69/2020, rendered in CP(IB)/499/7/HDB/2018.

3. As a consequence of the Impugned Order, the revised final Resolution Plan dated 04.01.2020, as it stood submitted by M/s. SVSS Commercial Pvt. Ltd., was approved by the Members of the Committee of Creditors, having 100% voting Shares, as per the provisions contained under Section 31 (1) of the Code. It is this Order of Approval of Resolution Plan, which has been subject to challenge, in this Appeal.

4. When initially the Company Appeal was preferred by filing the same, before the Registry of this Tribunal on 28.05.2021, it was not accompanied with any Condone Delay Application, despite being an Appeal under Section 61 of I

& B Code, 2016 and since the challenge was to the Impugned Order of 31.01.2020, it was apparently much beyond the period prescribed under Sec. 61 to be read with Sub Section 2, and even its proviso.

5. When later on, the Appeal was taken up to be argued on merits, after the exchange of pleadings and furnishing of Notes of Submissions, it is then only, at that stage that, the Appellant had preferred a Condone Delay Application, by filing the same before the Registry initially bearing Diary No. 247 dated 04.08.2021, which was subsequently re-numbered as regular IA No. 361 / 2021, which is listed today for Orders.

6. The said Condone Delay Application is being opposed by the Respondents by filing their objection.

7. The learned Counsel for the Appellant had simpliciter come up with the case that, since the Impugned Judgment happens to be of **31.01.2020**, if the period of Limitation is determined in the light of the provisions contained under Section 61 of I & B Code, 2016, 30 days period would be expiring on **01.03.2020** and upon the extension of period of Limitation for the purposes of preferring of an Appeal under Sec. 61, which could be extended by 15 days, by the Appellate Tribunal, as contemplated under the proviso to Sub Section 2 of Section 61, the cut off period of maximum 45 days from the date of Judgment would be expiring on **16.03.2020**. Therefore, in view of orders passed by

Hon'ble Apex Court from time to time in Suo Moto WP (Civil) No. 3 of 2020 suspending the running of limitation from 15.03.2020 for inter alia filing appeals, this appeal is within the period of limitation.

8. He further submits that since he was not a party to the proceedings, he didn't have any knowledge of the passing of the Impugned Judgment on 31.01.2020 that he had the knowledge of the Impugned Order on 13.02.2020 when the RP emailed the same to him, and as such, he had preferred the Appeal only when he had procured the copy of the Judgment on 30.04.2021 and that if limitation period is computed from the date of knowledge, then the Appeal is well within the condonable period in light of the orders of Hon'ble Apex Court.

9. He submits that since the Appellant, not being a party to the Company Petition, the free copy of the Judgment as contemplated under Rule 50 of the NCLT Rules, 2016, immediately after passing of the Judgment on 31.01.2020, would not be made available to him, and hence, it was obviously not sent to him, being not a party to the proceedings. But, since the 45 days period under the proviso to Section 61 (2), computed from the date of Judgment i.e. 31.01.2020, would be expiring only on 16.03.2020, being a period falling within the cut off period starting from 15.03.2020 to 28.02.2022, provided as per the Judgment of the Hon'ble Apex Court rendered in a Suo Motu proceedings in Miscellaneous Application No. 21 / 2022 in MA No. 665 / 2021 in Suo Motu Writ Petition No. 3 / 2020, owing to the Covid-19 situation, he pleads that he

would be entitled for the extension of the period of limitation contemplated under the proviso to Sub Section 2 of Section 61, for the purposes of the determination of the period of limitation as the same would have to be construed on the basis of the ratio propounded by the Hon'ble Apex Court and accordingly, the date of filing the Appeal would be falling within the upper time limit provided by the Hon'ble Apex Court in the aforesaid Judgment of Suo Motu Writ (C) No. 3 / 2020, as it has been provided under Para 5 for the relaxation of the limitation period, due to unforeseen circumstances because of Covid-19 situation.

10. The Hon'ble Apex Court in Para 5 of the said Judgment has provided that the period of limitation of all the proceedings either under the general law or under special laws, would stand extended with effect from **15.03.2020 to 28.02.2022**.

11. The relevant observation, as it has been made in Para 3 of the Judgment in Suo Motu Writ (C) No. 3 / 2020 is extracted hereunder:-

> *``3. The period from 15.03.2020 till 14.03.2021 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.''*

12. Similarly, the relevant observation as made in Para 5 of Judgment dated 10.01.2022 in MA No. 21 / 2022 in Suo Motu Writ (C) No. 3 / 2020 is extracted hereunder:

> ``*5. Taking into consideration the arguments advanced by learned Counsel and the impact of surge of the virus on public health and adversities faced by the litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions;*
>
> *I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.*
>
> II. *Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.*
>
> III. *In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, not withstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.*
>
> IV. *It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court*

or tribunal can condone delay) and termination of proceedings.''

13. From that perspective, the learned Counsel for the Appellant had submitted that, since though the Impugned Order was passed on 31.01.2020, and the Appeal was preferred on 28.05.2021, but still, it would be falling well within the cut off period of limitation prescribed by the Hon'ble Apex Court, as per Para 5 of the Judgment extracted above, which started running from 15.03.2020, because, since in the instant Appeal, the 45 days period would be expiring on 16.03.2020 which falls within the period from 15.03.2020 to 28.02.2022, as per Para 3 of the Judgment cited above and hence, he would be entitled to get the benefit of the Hon'ble Apex Court Judgment.

14. In elaboration of his argument, he has submitted that, the issue with regards to further extension of the extended period, as it stood provided under the proviso to Sub Section 2 of Section 61, on account of Covid-19 pandemic, an issue which has been dealt with by the Hon'ble Apex Court in the matters of `Sagufa Ahmed'. He has contended that in the said Judgment of ***Sagufa Ahmed & Ors. Vs. Upper Assam Plywood Products Pvt. Ltd. & Ors.,*** as decided on 18.09.2020, the Hon'ble Apex Court has observed that the extended period of limitation under the Statute, if it was falling well within the period of limitation as it stood, extended by Para 3 of the Judgment of Suo Motu Writ Petition by

the Hon'ble Apex Court, due to Covid-19, the same would be condoned in the light of the aforesaid ratio. The relevant paragraphs are extracted hereunder:-

> *``17. But we do not think that the appellants can take refuge under the above order in Cognizance for Extension of Limitation, In re [Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10 : 2020 SCC OnLine SC 343] . What was extended by the above order [Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10 : 2020 SCC OnLine SC 343] of this Court was only "the period of limitation" and not the period up to which delay can be condoned in exercise of discretion conferred by the statute. The above order [Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10 : 2020 SCC OnLine SC 343] passed by this Court was intended to benefit vigilant litigants who were prevented due to the pandemic and the lockdown, from initiating proceedings within the period of limitation prescribed by general or special law. It is needless to point out that the law of limitation finds its root in two Latin maxims, one of which is vigilantibus et non dormientibus jura subveniunt which means that the law will assist only those who are vigilant about their rights and not those who sleep over them.*
>
> *18. It may be useful in this regard to make a reference to Section 10 of the General Clauses Act, 1897 which reads as follows:*
>
> > *"**10. Computation of time**.—(1) Where, by any Central Act or Regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open:*
> >
> > *Provided that nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act, 1877 (15 of 1877), applies.*

(2) This section applies also to all Central Acts and, Regulations made on or after the fourteenth day of January, 1887."

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 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. [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."

15. The learned Counsel for the Appellant has further referred to the Judgment rendered in ***Civil Appeal No. 6411 - 6418 of 2023, arising out of SLP (C) No. 4789 – 4796 of Aditya Khaitan & Ors Vs. IL & FS Financial Services Limited,*** to support his contention. In particular, he has referred to the excerpts of Sagufa Ahmed to contend that the extended period under the proviso of Sub Section 2 of Section 61 lying within the prerogative of Appellate Tribunal, if it is expiring between 15.03.2020 to 28.02.2022, the same has to be exempted in the light of the principles as laid down in the Judgment of Sagufa Ahmed (Supra) and as further clarified, later on, expanded by the Judgment of Aditya Khaitan (Supra). The relevant Paras which he has made reference to are those as contained in Para 11 and Para 15, which are extracted hereunder:

> *``11. In suo motu proceedings titled In Re: Cognizance for Extension of Limitation, series of orders came to be passed. Those orders are dated 23.03.2020, 06.05.2020, 10.07.2020, 08.03.2021, 27.04.2021 and 23.09.2021. The orders are not repeated since the relevant portions are extracted in* ***Prakash Corporates (supra)***.
>
> *15. Contrasting the order of 23.03.2020 with 08.03.2021, which order of 08.03.2021 is reiterated in the orders of 27.04.2021 and 22.09.2021, the following emerges. The order of 08.03.2021 needs to be extracted first.*
>
> > "*1. Due to the onset of COVID-19 pandemic, this Court took suo motu cognizance of the situation arising from difficulties that might be faced by the litigants across the country in filing petitions/applications/suits/appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under any special laws (both Central or State). By an order*

dated 27.03.2020 this Court extended the period of limitation prescribed under the general law or special laws whether compoundable or not with effect from 15.03.2020 till further orders. The order dated 15.03.2020 was extended from time to time. Though, we have not seen the end of the pandemic, there is considerable improvement. The lockdown has been lifted and the country is returning to normalcy. Almost all the Courts and Tribunals are functioning either physically or by virtual mode. We are of the opinion that the order dated 15.03.2020 has served its purpose and in view of the changing scenario relating to the pandemic, the extension of limitation should come to an end.

2. *We have considered the suggestions of the learned Attorney General for India regarding the future course of action. We deem it appropriate to issue the following directions: -*

2.1 In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 14.03.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2020, if any, shall become available with effect from 15.03.2021.

2.2 In cases where the limitation would have expired during the period between 15.03.2020 till 14.03.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 15.03.2021. In the event the actual balance period of limitation remaining, with effect from 15.03.2021, is greater than 90 days, that longer period shall apply.

2.3 The period from 15.03.2020 till 14.03.2021 shall also stand excluded in computing the periods prescribed under Sections 23(4) and 29-A of the Arbitration and Conciliation Act, 1996, Section 12-A of the

Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings."

2.4 The Government of India shall amend the guidelines for containment zones, to state.

"Regulated movement will be allowed for medical emergencies, provision of essential goods and services, and other necessary functions, such as, time bound applications, including for legal purposes, and educational and job-related requirements.

3. The Suo Motu Writ Petition is disposed of accordingly"

16. Apparently, the argument as extended by the learned Counsel for the Appellant in the context of the instant Appeal, for the purposes of seeking condonation of delay by filing IA No. 361 / 2021, at its first glimpse seems to be quite logical after implications in the light of the ratio of the Hon'ble Apex Court, on which, heavy reliance has been placed by the learned Counsel for the Appellant.

17. He further submitted that, for the purposes of determination of the period of Limitation, the wider principle as prescribed under the Judgment reported in ***2022 Vol I SCC Civil 741 V. Nagarajan Vs SKS Ispat and Power Ltd. & Ors.*** has to be taken into consideration, for the purposes of determining as to what would be the appropriate and actual prescribed period of limitation for the

purposes of preferring of an Appeal under Sec. 61 and in what manner the impact of the second proviso to Sub Section 2 of Section 61 would be attracted, and rationally construed.

18. The Hon'ble Apex Court in the matters of V. Nagarajan (Supra), while dealing with the implications of Rule 22 (2) of the NCLAT Rules, 2016, dealt with the aspect of the presentation of Appeal in the context of the provisions contained under Rule 22. In Para 29 of the said Judgment, the Hon'ble Apex Court has observed that the **parties cannot be automatically dispensed with from their obligation to apply for and obtain a Certified Copy of the Judgment for the purposes of filing an Appeal** and the ultimate conclusion which has been arrived at is that as contained in Para Nos. 29 & 31 of the said Judgment as under:

> ``*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.

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 14 ["14. Power to exempt.—The Appellate Tribunal may on sufficient cause being shown, exempt parties from compliance with any requirement of these rules and may give such directions in matters of practice and procedure, as it may consider just and expedient on the application moved in this behalf to render substantial justice."] 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 [Prowess International (P) Ltd. v. Action Ispat & Power (P) Ltd., 2018 SCC OnLine NCLAT 644] 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.''

19. To answer the argument raised in Para 29 of the Judgment of V. Nagarajan (Supra), the learned Counsel for the Respondent who had filed his objection to the Condonation Delay Application on 08.11.2022, has submitted therein that the ratio of Sagufa Ahmed or that of the Suo Motu Writ Petition decided by the Hon'ble Apex Court, extending the period of Limitation from 15.03.2020 till 28.02.2022, would not be attracted in the instant Appeal as it has been sought for, because the Appellant has filed the Appeal, only on 28.05.2021, though well before the cut off period i.e. 28.02.2022 as per the dictum of the Hon'ble Apex Court, because reasons as below.

20. The Respondent in his Reply has raised threefold objections:

(i) That the Appellant would not be entitled for the benefit of the ratio laid down in the matters of Sagufa Ahmed's Judgment or the Judgment of the Hon'ble Apex Court as rendered in the Suo Motu Writ Petition for the reason being that;

As per the records, the Appellant had for the first time moved an Application for obtaining the Certified Copy of the Judgment only on 30.04.2021.

What he intends to submit that as per Para 29 of V. Nagarajan's Case (Supra), since the Appellant has applied for the Certified Copy only on 30.04.2021, he will not be entitled for the benefit of extension of Limitation period, because of the fact that according to Para 29 of V. Nagarajan's case (Supra), a party cannot automatically dispense with the obligation to apply for and obtain a Certified Copy of the Impugned Judgment, which should have been applied within the statutory period of limitation i.e. 30 days i.e. by 01.03.2020 in the instant case.

Since, the Appellant had applied for obtaining the copy of the Impugned Judgment dated 31.01.2020, only on 30.04.2021, he is not entitled for grant of benefit of extension of Limitation even if, the principles of Suo Motu Writ Petition Judgment of the Hon'ble Apex Court dated 10.01.2022 is taken into consideration.

(ii) Secondly, he submits that the Judgment was rendered on 31.01.2020, and the prescribed period of 30 days within which to file an Appeal would expire on 01.03.2020. This being so, the aforesaid period of limitation would expire on 01.03.2020 which would be a period much prior to the period of extended limitation ordered by Hon'ble Apex Court because of Covid-19 situation which was **made effective only from 15.03.2020 till 28.02.2022**, meaning thereby, he intends to submit that, since, the extended limitation period as laid down by the Suo Motu Writ

Petition Judgment dated 10.01.2022, would not be available to the Appellant, because the principal prescribed period of limitation for procuring the Certified Copy of the Judgment expired prior to 15.03.2020, the date on which limitation was extended, since the Appellant did not apply for getting the Certified Copy of the Judgment in the principal prescribed period of limitation and since the Application for procuring the Certified Copy of the Judgment was only preferred on 30.04.2021, he will not be entitled to get the benefit of limitation even in the light of the Judgment of V. Nagarajan's case as envisaged in Para 29, as well as the Judgment of the Principal Bench which lays down that the benefit of extended period of limitation under the proviso to Sub Section 2 of Section 61, would only be made available to the party who is diligent to the proceedings, subject to the condition that the Application for obtaining the Certified Copy was made well before expiry of the period of 30 days from the date of the Judgment, which in the instant case would be on 01.03.2020. Thus, he contends that as the copy was not applied for, between the period from 30.01.2020 to 01.03.2020, since, being the period falling much prior to the cut off period i.e. 15.03.2020, as per the Suo Motu Judgment, the benefit of extended period of limitation will not be made available to the Appellant.

(iii) He further submits that the Appellant would not be entitled for taking the benefit under the plea that, he was not a party to the proceedings, because of the fact and also as it was not denied, that the Appellant was a member of the Committee of Creditors (CoC), he was having knowledge of the proceedings right from the date of Constitution of CoC and hence, he cannot take a plea that, he was not a party to the proceedings and therefore, he did not have the knowledge and accordingly, would be entitled for extension of the period of limitation prescribed under the Statute, in the light of the aforesaid Judgments of Sagufa Ahmed and Aditya Khaitan and also the Suo Motu Writ Petition of the Hon'ble Apex Court (Supra).

21. We are of the view that the basic objective of extension of the period of limitation, even to a Person or a Body, who is not a party to the proceedings, the same could only be extended subject to the condition that, even if they did not had the knowledge of the proceedings, be it in whatsoever capacity. Since the Appellant in the present case is a member of the CoC, he was with conscious knowledge of the fact that the CIRP proceedings are in progress and under these peculiar situation, the knowledge of the Judgment dated 31.01.2020, would be deemed to be available with the Appellant from the date of the Judgment itself and since not having applied for obtaining the Certified Copy of the Judgment

dated 31.01.2020, till 30.04.2021, the Appeal would be barred by limitation, since having preferred the same after about 451 days.

22. To draw a distinction, the learned Counsel for the Appellant submits that the intention of Para 29 of the Judgment of V. Nagarajan case (Supra) for the necessity of applying for the Certified Copy of the Judgment would be in relation to the **``party''** to the proceedings and not otherwise, and thus, the contention of the Respondent will not hold on the ground that since he was not a `party' to the proceedings, the requirement of submission of an Application for procurement of the Certified Copy of the Judgment within the principal prescribed period does not arise.

23. As far as the stress placed by the learned Counsel for the Appellant to the word **``Party''** is concerned, it would be apt to derive, the definition of party, as it has not been given under I & B Code, 2016.

In that eventuality, the definition of **``party''** would be derived from the NCLT Rules of 2016, which defines **``party''**, under its Sub Rule (16) of Rule 2, which reads as under:

Sub Rule (16) of Rule 2:

> *``Party'' means a person who prefers an appeal or application or petition before the Tribunal and includes respondent or any person interested in the said appeal or application or petition including the Registrar of Companies or the Regional Director or Central Government or State Government or official liquidator and any*

person who has a right under the Act, or the Reserve Bank of India Act 1934 (2 of 1934) to make suggestions or submissions or objections or reply;''

24. If the said definition of the word ``party'' under the NCLT Rules, 2016, is taken into consideration, it is quite wide and it does not stipulate that a person for the purposes of being treated as to be a `party', has to be actually the party to the proceedings. Rather, the term party as defined under Sub Rule (16) of Rule 2 of the NCLT Rules of 2016, is wide enough to include within itself a person who prefers an Appeal. Particularly, when the definition itself uses the word ``**Person who prefers the Appeal**'', it will also logically include the Appellant himself, because the Appellant has preferred an Appeal on 28.05.2021 under Section 61 of the I & B Code, 2016, and hence, the attempt made, to carve out an exception on the basis of the use of word ``Party'' in Para 29 of the Judgment of V. Nagarajan, for the purpose to exclude himself on the grounds that he was not covered by the aforesaid principles to apply for a Certified Copy of the Judgment within the period of limitation prescribed under the Statute would not be sustainable, for the reason being that the definition of ``Party'', includes the word ``person preferring an appeal'', it does not classify or sub-classify the party to the proceedings. Thus, the Appellant cannot be excluded from the implications of Para 29, as it has been determined in the Judgment of V. Nagarajan (Supra), mandating for applying for the Certified Copy within the

initial 30 days of period of Limitation, under Section 61 (1) of the I & B Code, 2016.

25. There is another reason as to why the argument extended by the learned Counsel for the Appellant in the context of the definition of ``**party''** and the interpretation given to it for the purposes of being included within the zone of consideration for the grant of extension of limitation for the period from 15.03.2020 to 28.02.2022, in the light of the Judgment of Suo Motu proceedings of the Hon'ble Apex Court, on the pretext that, since the Appeal was preferred on 28.05.2021, he would be entitled for the benefit of limitation is not acceptable, because, despite having concrete knowledge of proceedings, the Certified Copy of the Judgment was applied at a much belated stage, not within the principal limitation period, which expired much before the extended period granted by Hon'ble Apex Court's Judgment, due to Covid-19 situation.

26. Apart from the above observations which has been made by us, if the Appellate provision under Section 61 of the I & B Code, 2016, is taken into consideration, which for the purposes of brevity only, Sub Section 1 and Sub Section 2 are extracted hereunder:

> ``**61. Appeals and Appellate Authority.-**
>
> *(1) Notwithstanding anything to the contrary contained under the Companies Act 2013 (18 of 2013),* ***any person aggrieved*** *by the*

order of the Adjudicating Authority under this part may prefer an appeal to the National Company Law Appellate Tribunal.

(2) Every appeal under sub-section (1) shall be filed within thirty days before the National Company Law Appellate Tribunal''

27. It is to be noted that the provision uses the word ``**Person Aggrieved''**, under Section 61, and that the legislature consciously does not uses the word ``**Party to the proceedings**'', who can prefer an Appeal''. Because of the use of word ``Person Aggrieved'' under Sec. 61, it is wide enough to include within it, any person other, than the original parties to the Appeal, who is aggrieved by the Judgment under Appeal.

28. In that eventuality, the interpretation given to the proviso to Sub Section 2 of Section 61, as given and dealt in Para 29 of V. Nagarajan's Judgment (Supra), would be applicable in the instant case and the Appellant for the purposes of the Appeal would treated as to be a ``Person Aggrieved'', even though he might not have been a party to the proceedings. Thus, the necessity to apply for the Certified Copy within 30 days of Limitation will bind the Appellant too, as law carves out no exception as such for the words ``Person Aggrieved'', which is a provision which has to be read as a whole.

29. Much argument had been extended by the learned Counsel for the Appellant as to how the word ``party'', as mentioned in Para 29 of the

Judgment of V. Nagarajan, has to be read in the context of the Appellate provision contained under Sec. 61 of the I & B Code, 2016.

30. We have no hesitation to hold that owing to reasons given above, word ``parties'' as referred to in the V. Nagarajan Judgment (Supra) the provision under Section 61 of the Code, is not limited to the extent of the parties who are in contest to the proceedings, because, the Appellate provision, where it includes the word ``person aggrieved'', it would be wide enough expanded to include a party to the proceedings, as well as any other person other than, the party to the proceedings who can file an Appeal.

31. For the aforesaid purpose, we have already dealt with the definition of ``Party'' as given under the NCLT rules, but for better elucidation in its literal meaning as per Law Lexicon 6th Edition, the word ``party'' means `a person including a permanent establishment, if any, which participates or takes part in an arrangement or a litigation; that a ``party'' means who prefers or contest a judicial proceeding on merits, which would be inclusive of the Respondents too.

32. In other words, it could be said that the word ``party'' means a `person who files an application or who prefers the appeal before the Tribunal, which will include the Respondent too and to such an application or an appeal as the case may be, they would be treated as to be a ``party'' in contest to the

knowledge of the proceeding which has been drawn against them, before any Court or Tribunal.

The aforesaid interpretation of the word ``party'' has been dealt with in the Judgment of Allahabad High Court as reported in the year ***Brij Lal v. Damodar Das,*** **AIR 1922 All 238** , which in a nut shell has observed that, a person who takes part in a legal transaction or a proceeding could be said and treated to be a ``party'' to it.

> ``***WALSH, J.***:— *This appeal raises two points. It was an application in the court below against a person who had become a transferee of a decree which was subsequently set aside in the Privy Council in favour of the present appellants. The transferee was not a party to the proceeding in the Privy Council, but under the decree which the Privy Council set aside and of which he had become a transferee, he obtained possession of certain property and was, therefore, in the enjoyment of mesne profits in respect of it. The application to the court below, which was in substance a proceeding under section 144, but which adopted all the forms applicable to execution proceedings, asked that the respondent should account for mesne profits during the time for which he had been unlawfully in possession under a decree which had been set aside. The application was dismissed by the court below on the ground that it was time-barred by article 181 of the Limitation Act, and, secondly, on the ground that the respondent was not a party to the decree which gave rise to the application. A further point was raised under order II, rule 2, of the Code of Civil Procedure which obviously has no substance. The case has been extremely well argued on both sides before us and a great number of authorities have been cited on this vexed question. It is not desirable to add more than one is obliged to the tangle which appears to exist with regard to the method of reconciling proceedings under section 144 with other provisions of the law. It so happens that in the case before us the point whittles itself down to a comparatively narrow compass. We agree with the decision of this Court in the case of Jiwa Ram v. Nand Ram [*

(1922) Supra p. 407.] that proceedings under section 144 of the Code are not execution proceedings, although they are, of course, in the nature of proceedings in execution to enforce either directly or indirectly the final decree. We do not agree with the lower appellate court that it is necessary that a party to an application under section 144 should have been a party to the decree. Section 144 is very wide in its terms. It includes matters which an execution court or an appellate court could not ordinarily deal with, and the word "party" is not used in that section in the sense ***"party to the suit", the expression ordinarily found in other parts of the Code dealing with execution matters, but must mean "party to the application."*** *It so happens that in this particular case the matters arising out of the final decree of the Privy Council had been already on more than two occasions before this Court, although not always as between the identical parties now before us. We have decided to follow the view taken by this Court in the same or cognate matters arising out of this Privy Council decree. That is to say, firstly, this Court has already held that Damodar Das, although not a party to the Privy Council decree, was bound to give up possession and that an application under section 144 was properly made against him. We agree. That disposes of the second point decided in his favour by the lower court, Mr. Justice STUART, in a previous matter which came before him by way of first appeal in May of last year (the case is Madhusudan Das v. Birj Lal [(1921) 61 Indian Cases, 806.] , held that the application was one justified by the provisions of section 144, and, inasmuch as its only authority was derived from the final decree of the Privy Council, it came within the expression used in article 183 of the Limitation Act, as being an application to enforce an order of His Majesty in Council. The words which we have just quoted are clearly capable of being read so as to cover an application of this kind, which is in substance one to enforce a decree of the Privy Council which restored the parties to the position they were in before the High Court interfered. We think the only logical course to take, whatever academic view one might take as a matter of construction in the interpretation of these somewhat difficult provisions, is to follow the view taken by Mr. Justice Stuart in the case of Madhusudan Das v. Birj Lal [(1921) 61 Indian Cases, 806.] . The appeal must be allowed and the case restored to the lower court to deal*

with on the merits. The applicants will have the costs of this appeal. Costs in the court below will abide the result.''

While on the contrary, a ``person aggrieved'', if it is visualised from the perspective of the language used in the Appellate provision, broadly speaking, means a ``party'' or a ``person'', who though, not being a party to the proceedings is a person who is aggrieved by a decision / judgment which affects / has the potential to affect his personal rights.

33. The expression ``person aggrieved'' will have to be interpreted with reference to the purpose and the provisions of the Statute. One interpretation is that a ``person'' will be held to be aggrieved by a decision, if that decision is materially adverse to him or materially effects his or her rights. The said interpretation of the ``person aggrieved'' was dealt with by the Hon'ble Apex Court in the Judgment reported in ***1975 (2) SCC 702 Bar Council of Maharashtra Vs. M.V. Dabholkar*** and the aforesaid expression has been dealt in Paras 27 & 28 of the said Judgment, which is extracted hereunder:-

``27. The words "person aggrieved" are found in several statutes. The meaning of the words "person aggrieved" will have to be ascertained with reference to the purpose and the provisions of the statute. Sometimes, it is said that the words "person aggrieved" correspond to the requirement of locus standi which arises in relation to judicial remedies.

28. Where a right of appeal to courts against an administrative or judicial decision is created by statute, the right is invariably confined to a person aggrieved or a person who claims to be aggrieved. The meaning

of the words "a person aggrieved" may vary according to the context of the statute. One of the meanings is that a person will be held to be aggrieved by a decision if that decision is materially adverse to him. Normally, one is required to establish that one has been denied or deprived of something to which one is legally entitled in order to make one "a person aggrieved". Again, a person is aggrieved if a legal burden is imposed on him. The meaning of the words "a person aggrieved" is sometimes given a restricted meaning in certain statutes which provide remedies for the protection of private legal rights. The restricted meaning requires denial or deprivation of legal rights. A more liberal approach is required in the background of statutes which do not deal with property rights but deal with professional conduct and morality. The role of the Bar Council under the Advocates Act is comparable to the role of a guardian in professional ethics. The words "persons aggrieved" in Sections 37 and 38 of the Act are of wide import and should not be subjected to a restricted interpretation of possession or denial of legal rights or burdens or financial interests. The test is whether the words "person aggrieved" include "a person who has a genuine grievance because an order has been made which prejudicially affects his interests". It has, therefore, to be found out whether the Bar Council has a grievance in respect of an order or decision affecting the professional conduct and etiquette.''

34. The use of word ``person aggrieved'', bestows upon that a person who is not a party to the proceedings, a locus, in order to agitate his grievances, if the Judgment causes a prejudice, to a person who is a third party to the proceedings and has got a direct legal interest, in the issue involved in an adjudication process. The said principle was dealt with in yet another Judgment of the Hon'ble Apex Court, as reported in ***1997 (4) SCC 452***, *Northern Plastics Limited V. Hindustan Photo Films Manufactures Limited*. The relevant Para 10 is extracted hereunder:

*``**10.** We have, therefore, to turn to the scheme of the Act providing for appeals. The provision for appeals is found in Chapter XV of the Act. Section 128 deals with "Appeals to Collector (Appeals)" and Section 128-A deals with "Procedure in appeal". The Appellate Tribunal is constituted as per Section 129 of the Act. Sub-section (1) thereof lays down that "the Central Government shall constitute an Appellate Tribunal to be called the Customs, Excise and Gold (Control) Appellate Tribunal consisting of as many judicial and technical members as it thinks fit to exercise the powers and discharge the functions conferred on the Appellate Tribunal by this Act". It is, therefore, obvious that the Appellate Tribunal CEGAT is a creature of statute and derives its jurisdiction and powers only from the statute creating it and not outside the same. Then follows Section 129-A dealing with "Appeals to the Appellate Tribunal". The relevant provisions thereof read as under:*

> *"129-A. Appeals to the Appellate Tribunal.—(1) Any person aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order—*
>
> *(a) a decision or order passed by the Collector of Customs as an adjudicating authority;*
>
> *(b) to (d)***"*

Sub-sections (2) and (3) of Section 129-A are relevant for our present purpose. They read as under:

> *"129-A. (2) The Collector of Customs may, if he is of opinion that an order passed by*
>
> *(a) the Appellate Collector of Customs under Section 128, as it stood immediately before the appointed day, or*
>
> *(b) the Collector (Appeals) under Section 128-A,*
>
> *is not legal or proper, direct the proper officer to appeal on his behalf to the Appellate Tribunal or, as the case may be, the Customs and Excise Revenues Appellate Tribunal established under Section 3 of the Customs and Excise Revenues Appellate Tribunal Act, 1986, against such order.*
>
> *(3) Every appeal under this section shall be filed within three months from the date on which the order sought to be appealed against is communicated to the Collector of Customs, or as the case may be, the other party preferring the appeal."*

Section 129-D(1) of the Act also deserves to be noted at this stage. It reads as under:

> *"129-D. Powers of Board or Collector of Customs to pass certain orders.—(1) The Board may, of its own motion, call for and examine the record of any proceeding in which a Collector of Customs as an adjudicating authority has passed any decision or order under this Act for the purpose of satisfying itself as to the legality or propriety of any such decision or order and may, by order, direct such Collector to apply to the Appellate Tribunal or, as the case may be, the Customs and Excise Revenues Appellate Tribunal established under Section 3 of the Customs and Excise Revenues Appellate Tribunal Act, 1986, for the determination of such points arising out of the decision or order as may be specified by the Board in its order."*

Section 129-DA gives powers of revision to the Board or Collector of Customs in certain cases and as we are concerned here with further proceedings against the order of Collector of Customs sub-section (1) of Section 129-DA would be relevant. It reads as under:

> *"129-DA. Powers of revision of Board or Collector of Customs in certain cases.—(1) The Board may, of its own motion or on the application of any aggrieved person or otherwise, call for and examine the record of any proceeding in which a Collector of Customs had passed any decision or order not being a decision or order passed under sub-section (2) of this section of the nature referred to in sub-section (5) of Section 129-D for the purpose of satisfying itself as to the correctness, legality or propriety of such decision or order and may pass such order thereon as it thinks fit."*

Similarly Section 129-DD gives powers of revision to the Central Government to entertain revision petitions against certain orders of the Collector (Appeals). It provides as under:

> *"129-DD. Revision by Central Government.—(1) The Central Government may, on the application of a person aggrieved by any order passed under Section 128-A, where the order is of the nature referred to in the first proviso to sub-section (1) of Section 129-A, annul or modify such order.*

Explanation.—For the purposes of this sub-section, 'order passed under Section 128-A' includes an order passed under that section before the commencement of Section 40 of the Finance Act, 1984, against which an appeal had not been preferred before such commencement and could have been, if the said section had not come into force, preferred after such commencement to the Appellate Tribunal."

The aforesaid provisions of the Act leave no room for doubt that they represent a complete scheme or code for challenging the orders passed by the Collector (Customs) in exercise of his statutory powers. It is axiomatic that the importer against whom the Collector has passed the impugned order of adjudication and who is called upon to pay the customs duty which, according to him, is not payable is certainly an "aggrieved person" who can prefer an appeal under Section 129-A(1) of the Act. So far as departmental authorities themselves are concerned including the Collector of Customs no direct right of appeal is conferred on the Collector to prefer appeal against his own order before the CEGAT. However there is sufficient safeguard made available to the Revenue by the Act for placing in challenge erroneous orders of adjudication as passed by the Collector of Customs by moving the Central Board of Excise and Customs under Section 129-D(1) for a direction to the Collector to apply to the CEGAT for determination of such point arising out of the decision or order as may be specified by the Board of Revenue in this connection. Similarly a statutory remedy is provided to the Collector of Customs in connection with orders of the Appellate Collector of Customs passed immediately before the appointed day and also in connection with the orders passed by the Collector of Customs (sic Appeals) under Section 128-A, to direct proper officer to appeal on his behalf as laid down by Section 129-A(2). Revisional powers are also conferred on the Central Board of Excise and Customs against the orders of Collectors of Customs as provided by Section 129-DA(1) as well as on the Central Government under contingencies contemplated by Section 129-DD(1). These are the only statutory modes contemplated by the Act by resort to which the orders of Collector (Customs) could be brought in challenge before higher statutory authorities including the CEGAT. In the light of this statutory scheme, therefore, it is not possible

to agree with the contention of the learned counsel for the contesting respondents that sub-section (1) of Section 129-A entitles any and every person feeling aggrieved by the decision or order of the Collector of Customs as an adjudicating authority, to prefer statutory appeal to the Appellate Tribunal. Neither the Central Government, through the Industries Department, nor the rival company or industry operating in the same field as the importer can as a matter of right prefer an appeal as "person aggrieved". It is true that the phrase "person aggrieved" is wider than the phrase "party aggrieved". But in the entire context of the statutory scheme especially sub-section (3) of Section 129-A it has to be held that only the parties to the proceedings before the adjudicating authority-Collector of Customs could prefer such an appeal to the CEGAT and the adjudicating authority under Section 122 can prefer such an appeal only when directed by the Board under Section 129-D(1) and not otherwise. It is easy to visualise that even a third party may get legitimately aggrieved by the order of the Collector of Customs being the adjudicating authority if it is contended by such a third party that the goods imported really belonged to it and not to the purported importer or that he had financed the same and, therefore, in substance he was interested in the goods and consequently the release order in favour of the purported importer was prone to create a legal injury to such a third party which is not actually arraigned as a party before the adjudicating authority and was not heard by it. Under such circumstances such a third party might perhaps be treated to be legally aggrieved by the order of the Collector of Customs as an adjudicating authority and may legitimately prefer an appeal to the CEGAT as a "person aggrieved". That is the reason why the legislature in its wisdom has used the phrase "any person aggrieved" by the order of the Collector of Customs as an adjudicating authority in Section 129-A(1). But in order to earn a locus standi as "person aggrieved" other than the arraigned party before the Collector of Customs as an adjudicating authority it must be shown that such a person aggrieved being third party has a direct legal interest in the goods involved in the adjudication process. It cannot be a general public interest or interest of a business rival as is being projected by the contesting respondents before us. In this connection we may refer to a Constitution Bench judgment of this Court in the case of Adi Pherozshah

Gandhi v. H.M. Seervai, Advocate General of Maharashtra [(1970) 2 SCC 484] . The question before the Constitution Bench in that case was as to whether the Advocate General of the High Court who was to be issued a notice in disciplinary proceedings by the Bar Council as per the provisions of Section 35(2) of the Advocates Act, 1961 had locus standi to prefer an appeal against the order of the disciplinary authority under Section 37 of the Advocates Act before the Bar Council of India. A majority of the Constitution Bench took the view that the Advocate General had no such locus standi. He could not be said to be a "person aggrieved" by the decision of the disciplinary authority exonerating the delinquent advocate concerned. Mitter, J., speaking for the majority considered the question in the light of the statutory settings of the Act and observed that to decide the question one had to look at the proceedings of this kind. We may refer to the pertinent observations in this connection made in paras 9 and 10 of the Report of the said judgment of Mitter, J.: (SCC p. 503, paras 9-10)

> *"Generally speaking, a person can be said to be aggrieved by an order which is to his detriment, pecuniary or otherwise or causes him some prejudice in some form or other. A person who is not a party to a litigation has no right to appeal merely because the judgment or order contains some adverse remarks against him. But it has been held in a number of cases that a person who is not a party to a suit may prefer an appeal with the leave of the appellate court and such leave would not be refused where the judgement would be binding on him under Explanation 6 to Section 11 of the Code of Civil Procedure. We find ourselves unable to take the view that because a person has been given notice of some proceedings wherein he is given a right to appear and make his submissions, he should without more have a right of appeal from an order rejecting his contentions or submissions. An appeal is a creature of statute and if a statute expressly gives a person a right to appeal, the matter rests there.*
>
> *Innumerable statutes both in England and in India give the right of appeal to 'a person aggrieved' by an order made and the*

provisions of such statutes have to be construed in each case to find out whether the person preferring an appeal falls within that expression. As was observed in Robinson v. Currey [(1881) 7 QBD 465 : (1881-85) All ER Rep Ext 1770] the words 'person aggrieved' are 'ordinary English words which are to have the ordinary meaning put upon them'. According to Halsbury's Laws of England (Third Edition, Vol. 25), page 293, footnote 'h':

> *'... the expression is nowhere defined and must be construed by reference to the context of the enactment in which it appears and all the circumstances.'*

Attempts have however from time to time been made to define the expression in various cases. In Sidebotham, Re, ex p Sidebotham [(1880) 14 Ch D 458 : (1874-80) All ER Rep 588] (Ch D at p. 465) it was observed by James, L.J.:

'But the words "person aggrieved" do not really mean a man who is disappointed of a benefit which he might have received if some other order had been made. A "person aggrieved" must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something, or wrongfully refused him something, or wrongfully affected his title to something."

Generally, the ``person aggrieved'' would be the person who is materially affected by the impugned action or whose rights are materially affected by the Impugned Order, who could prefer an Appeal under Sec. 61 of the Code.

35. The expression ``party'' and expression ``person aggrieved'' are two different expressions; the word ``party'' will not be inclusive of the term ``person aggrieved'' as it would be confined to the party in case before a Court. On the other hand, the word ``person aggrieved'' is wide enough to include

within it a party to the proceedings or any other person who is likely to be affected by a decision to be rendered in a matter prejudicial to him and it is irrespective of a definite separate identity of a person or group of persons who sustains injury, because of a legal adjudication.

The said principle was dealt by the Hon'ble Apex Court in a Judgment reported in ***S. Khushboo v. Kanniammal, 2010 (5) SCC 600, (relevant Para is extracted hereunder:-):***

> ``***38.*** *In M.S. Jayaraj v. Commr. of Excise [(2000) 7 SCC 552] this Court observed as under:*
>
> > *"The 'person aggrieved' means a person who is wrongfully deprived of his entitlement which he is legally entitled to receive and it does not include any kind of disappointment or personal inconvenience. 'Person aggrieved' means a person who is injured or one who is adversely affected in a legal sense."*
>
> ***41.*** *This Court in G. Narasimhan case [(1972) 2 SCC 680 : 1972 SCC (Cri) 777 : AIR 1972 SC 2609] further noted that the news item in question did not mention any individual person nor did it contain any defamatory imputation against any individual. Accordingly, it was held that the complainant was not a "person aggrieved" within the meaning of Section 198 CrPC, 1898. The Court also took note of Explanation 2 to Section 499 IPC which contemplates defamation of "a company or an association or any collection of persons as such". Undoubtedly, the Explanation is wide but in order to demonstrate the offence of defamation, such a collection of persons must be an identifiable body so that it is possible to say with precision that a group of particular persons, as distinguished from the rest of the community stood defamed. In case the identity of the collection of persons is not established so as to be relatable to the defamatory words or imputations, the complaint is not maintainable. In case a class is mentioned, if such a class is indefinite,*

the complaint cannot be entertained. Furthermore, if it is not possible to ascertain the composition of such a class, the criminal prosecution cannot proceed.''

36. From the above context, the distinction which has been carved out by the Appellant's Counsel to contend that since, he was a ``person aggrieved'' and ``not a party'' to the proceedings and did not have the knowledge of the case, and since he was a ``person aggrieved'', the aspect and implications of limitation has to be construed in the context of the Para 3 of the Judgment of Suo Motu Writ Petition, Judgment of the Hon'ble Apex Court, because of Covid-19 situation.

37. In order to further qualify the said argument, the learned Counsel for the Appellant had submitted that, the contention raised by the learned Counsel for the Respondent that, the Appellant had participated in the meetings of the Committee of Creditors and therefore, he is a party to the proceedings is not correct and that, for the aforesaid purpose, the said person attending meetings of CoC cannot be termed as to be a ``person aggrieved'' or a ``party'', unless the parameters prescribed under Section 21 (2) of the I & B Code, 2016, which describes the constitution of Committee of Creditors are satisfied. The definition of ``Committee of Creditors'', is extracted hereunder:-

``***21. Committee of creditors***.— *(1) The interim resolution professional shall after collation of all claims received against the corporate debtor and*

determination of the financial position of the corporate debtor, constitute a committee of creditors.

(2) The committee of creditors shall comprise all financial creditors of the corporate debtor:

Provided that a [financial creditor or the authorised representative of the financial creditor referred to in sub-section (6) or sub-section (6-A) or sub-section (5) of Section 24, if it is a related party of the corporate debtor,] shall not have any right of representation, participation or voting in a meeting of the committee of creditors:

[Provided further that the first proviso shall not apply to a financial creditor, regulated by a financial sector regulator, if it is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares [or completion of such transactions as may be prescribed,] prior to the insolvency commencement date.]

(3) [Subject to sub-sections (6) and (6-A), where] the corporate debtor owes financial debts to two or more financial creditors as part of a consortium or agreement, each such financial creditor shall be part of the committee of creditors and their voting share shall be determined on the basis of the financial debts owed to them.

(4) Where any person is a financial creditor as well as an operational creditor,—

(a) such person shall be a financial creditor to the extent of the financial debt owed by the corporate debtor, and shall be included in the committee of creditors, with voting share proportionate to the extent of financial debts owed to such creditor;

(b) such person shall be considered to be an operational creditor to the extent of the operational debt owed by the corporate debtor to such creditor.

(5) Where an operational creditor has assigned or legally transferred any operational debt to a financial creditor, the assignee or transferee shall be considered as an operational creditor to the extent of such assignment or legal transfer.

(6) Where the terms of the financial debt extended as part of a consortium arrangement or syndicated facility provide for a single trustee or agent to act for all financial creditors, each financial creditor may—

(a) authorise the trustee or agent to act on his behalf in the committee of creditors to the extent of his voting share;

(b) represent himself in the committee of creditors to the extent of his voting share;

(c) appoint an insolvency professional (other than the resolution professional) at his own cost to represent himself in the committee of creditors to the extent of his voting share; or

(d) exercise his right to vote to the extent of his voting share with one or more financial creditors jointly or severally.

[(6-A) Where a financial debt—

(a) is in the form of securities or deposits and the terms of the financial debt provide for appointment of a trustee or agent to act as authorised representative for all the financial creditors, such trustee or agent shall act on behalf of such financial creditors;

(b) is owed to a class of creditors exceeding the number as may be specified, other than the creditors covered under clause (a) or sub-section (6), the interim resolution professional shall make an application to the Adjudicating Authority along with the list of all financial creditors, containing the name of an insolvency professional, other than the interim resolution professional, to act as their authorised representative who shall be appointed by the Adjudicating Authority prior to the first meeting of the committee of creditors;

(c) is represented by a guardian, executor or administrator, such person shall act as authorised representative on behalf of such financial creditors,

and such authorised representative under clause (a) or clause (b) or clause (c) shall attend the meetings of the committee of creditors, and vote on behalf of each financial creditor to the extent of his voting share.

(6-B) The remuneration payable to the authorised representative—

(i) under clauses (a) and (c) of sub-section (6-A), if any, shall be as per the terms of the financial debt or the relevant documentation; and

(ii) under clause (b) of sub-section (6-A) shall be as specified which shall form part of the insolvency resolution process costs.]

[(7) The Board may specify the manner of voting and the determining of the voting share in respect of financial debts covered under sub-sections (6) and (6-A).

(8) Save as otherwise provided in this Code, all decisions of the committee of creditors shall be taken by a vote of not less than fifty-one per cent. of voting share of the financial creditors:

Provided that where a corporate debtor does not have any financial creditors, the committee of creditors shall be constituted and shall comprise of such persons to exercise such functions in such manner as may be specified.]

(9) The committee of creditors shall have the right to require the resolution professional to furnish any financial information in relation to the corporate debtor at any time during the corporate insolvency resolution process.

(10) The resolution professional shall make available any financial information so required by the committee of creditors under sub-section (9) within a period of seven days of such requisition.''

He submits that since the Appellant, not being a Financial Creditor would not be forming part of the Committee of Creditors, as provided under Sub Section 2 of Section 21, he cannot be attributed with the knowledge of the proceedings and further, he cannot be treated as to be a ``party'' to the proceedings though, he may be a ``person aggrieved''. By this argument at least the Appellant, admits its status in Committee of Creditors, and having knowledge of the proceedings too, which would be sufficient for Section 61 of the I & B Code, 2016.

38. He further submits that the status of the Appellant has also to be seen from the perspective of, as to what would be the implication even if it is to be accepted as per the argument as extended by the learned Counsel for the Respondent that the Appellant had participated in the proceedings by being a member of the Committee of Creditors and had held the meetings.

He states that even for the time being if it is presumed that, the Appellant had participated in the meeting of Committee of Creditors, then too, he should not be treated as to be a party to the proceedings, and as a consequence, having knowledge of the proceedings should not be attributed to him, because of the provisions of Section 24 (3) (c) of I & B Code, 2016, which is extracted hereunder:

``Section 24 (3) (c):

(3) The resolution professional shall give notice of each meeting of the committee of creditors to –

(c) operational creditors or their representatives if the amount of their aggregate dues is not less than ten per cent. of the debt.''

What he submits that as an Operational Creditor, notice was required to be served on him and in the absence of any notice on record, given by the Resolution Professional, of the meetings of Committee of Creditors, the

knowledge of proceeding cannot be derived, in the absence of condition prescribed is satisfied.

He submits that Operational Creditors or their representatives, even if they participate in the meeting, cannot be treated as to be a party to the proceedings and the mere participation in the meeting will not suffice the purpose for the purposes of attributing knowledge of the proceedings to the Appellant.

39. In response thereto, the learned Counsel for the Respondent has vehemently denied that the logic assigned by the Appellant's Counsel, and has submitted that contrary to the assertion of the Appellant, majority of the email communications, which he has placed on record along with the Counter Affidavit, pertaining to the correspondences made inter se between the parties to the proceedings, happen to have generated from the email address of the Appellant and from that perspective he goes on to argue that when right from the date of inception of the CIRP proceedings, these communications were being made on or from the email address of the Appellant, there would be a deeming knowledge of the proceedings with the Appellant and in that eventuality, when the Appellant had the knowledge and when despite of having the knowledge, he had not procured the Certified Copy of the Judgment, within the limitation period, which was apparently expiring prior to the expansion of the limitation as granted by the Hon'ble Apex Court's Judgment, the Appellant

would not be entitled for any benefit from the Judgment of the Suo Motu proceeding, because, possession of knowledge itself would be sufficient to determine the limitation period for the purposes of procurement of the Certified Copy of the Judgment which was necessitated for enabling to prefer an Appeal as per provisions under Sec. 61 of the Code.

40. The aspect of alleged lack of knowledge, which is being pleaded to derive the benefit of limitation, was an aspect considered by the Judgment of the Principal Bench of NCLAT, where the Principal Bench has observed that the knowledge of Judgment is an immaterial factor, because if that distorted interpretation is given to the date of knowledge, it would be leading to an absolute chaos in determining the period of limitation, contrary to the object of the Act, and that, date of knowledge of the Judgment, cannot be permitted to be used by the Appellant to circumvent the pre-condition of applying for the Certified Copy, within the period of limitation for getting the benefit of Para 29 of V. Nagarajan's Judgment. In the case on hand, though apparently, it seems that the Appellant is not a party to the proceedings, but, since he has knowledge of the proceedings, he will be falling well within the purview of the term ``Person Aggrieved'' as prescribed under Section 61 (1) and for the aforesaid purpose and particularly, for the purposes of extension of the benefit of the proviso to Sub Section 2 of Section 61, the Appellant would be treated as to be a ``Person Aggrieved'', falling under Sub Section 1 of Section 61 and hence, he

cannot get an exemption from applying for a Certified Copy within the period of 30 days for the purposes of preferring of an Appeal for the purposes of deriving the benefit of limitation of the extended period of 15 days under the proviso to Sub Section 2 of Section 61, so as to attract the benefit of Suo Motu Judgment of the Hon'ble Apex Court.

41. As far as the aspect of knowledge is concerned, that was the aspect considered in the Judgment rendered by the Principal Bench of the NCLAT in ***IA No. 808 / 2024 in Company Appeal (AT) (INS) No. 138 / 2024 Sumit Singh Basisth & Anr. Vs. Sare Gurugram Pvt. Ltd. &Anr.***, which was decided along with the other connected Appeals. In the aforesaid cases, lack of knowledge was sought to be taken as to be a ground for seeking a condonation of delay and this had been deprecated by the Principal Bench in the aforesaid Judgment as decided on 22.03.2024, wherein in Para Nos. 17 & 23, the Principal Bench has laid down the following principles:

> *``17. In the present case as noticed above, the Impugned Order dated 24th April, 2023 was pronounced on 24th April, 2023 which is mentioned in the Impugned Order itself when order is pronounced by the Court the pronouncement is for all concerned. We having already held that Hon'ble Supreme Court in Safire Technologies Pvt. Ltd. (supra) laid down that commencement of the period of limitation for filing an appeal under Section 61 is not date when Appellant came to knowledge of the Order.*
>
> *23. The mere fact that Appellants claim that they were not aware of the process of CIRP nor they could file any claim in the CIRP cannot be a ground to permit the condonation of delay which is beyond condonable*

period. Ignorance of entire CIRP Process cannot be a ground to condone.''

The necessity for applying for a Certified Copy of the Judgment and the intention of the legislature for procuring a copy within the prescribed period of limitation was an aspect which was dealt with by the Principal Bench of the NCLAT in the matters of ***Innovators Cleantech Private Limited V. Pasari Multi Projects Private Limited***.

The Principal Bench in Paras 27 & 29 of aforesaid Judgment of Innovators Cleantech Pvt. Ltd. (Supra), has observed that Rule 22 Sub Rule 2 of NCLAT Rules, 2016, stipulates for preferring an Appeal along with the Certified Copy of the Judgment and though powers have been given to the Tribunal to extend the time or waive the compliance of any Rule, framed under NCLAT Rules including grant of exemption from filing the Certified Copy of the Order, but still, filing of an application for a Certified Copy of the Order / Judgment is not just a technical requirement for computation of limitation, but, it is an indication of diligence of the ``Aggrieved Party'', in pursuing the Appeal. The relevant Para Nos. 27 & 29, are extracted hereunder:

``27. It was further held that 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. Now the question to be answered is as to whether without applying a certified copy of the order, whether an Appeal can be filed under Section 61 or not? Rule 22, sub-rule (2) as

extracted above clearly contemplate that every Appeal shall be accompanied by a certified copy of the order, whether the said requirement is 'mandatory' or can be held to be 'directory'.

29. It is to be noted that non-compliance of Rule 22, sub-rule (2) has not been provided, nor any consequence has been provided in the Rules in the event Appeal is filed without accompanied by a certified copy of the order. When the power has been given to Court to extend the time or waive compliance of any rule, we have no doubt that the Appeal can be filed without applying a certified copy of the orders, in the facts and situation of a particular case. At present, all orders are uploaded on website of the Adjudicating Authority and this Tribunal and litigants often file the Appeal by relying on uploaded copy on the website. We, thus, are of the view that Appeal filed without applying for a certified copy of the order, cannot be dismissed on this ground that Appellant has not applied for certified copy of the order. When an Applicant does not apply for a certified copy of the order within the limitation prescribed, he is not entitled to seek any exclusion under Section 12 of the Limitation Act and it is the Applicant, who has to comply the limitation prescribed for filing an Appeal, but the mere fact that he has not applied for certified copy of the order, cannot be a ground for rejecting the Appeal.''

Owing to the aforesaid, the Judgment of Sumit Singh Basisth and Innovators Cleantech (Supra), what could be culled out is that, that a person who is preferring an Appeal under Section 61, cannot seek an exclusion from the period of limitation to prefer an Appeal, on grounds of being a person aggrieved if, he has not been diligent enough to apply for the Certified Copy within the time period of limitation under Section 61, as it has been observed in Para 29 of V. Nagarajan Judgment.

42. Admittedly, because the Appellant has not disputed the fact of email communications being made to him or generated from his email address during the course of the proceedings of CIRP, there will be a deeming presumption of knowledge and if the fact of knowledge is not denied by the Appellant by a specific pleading to that effect, in that eventuality he cannot be deriving the benefit of extension of limitation as a consequence of the Covid-19 situation, which according to the Judgment of the Hon'ble Apex Court commenced from 15.03.2020, and the ratio of the said Judgment cannot be extended to be made applicable in the instant Appeal to the Appellant, because the mandatory period of 30 days for applying for the Certified Copy of the Impugned Order of 31.01.2020 expired much before the short date of the extended period of limitation laid down by the Judgment of the Hon'ble Apex Court in the Suo Motu proceedings, due to Covid-19 situation, which was made effective with effect from 15.03.2020.

43. The aforesaid view is being taken by us for the reason being that, when the Appellant himself has failed to comply with the first part of the intention of legislature of procuring the Certified Copy of the Judgment in order to enable him to file an Appeal as an ``Aggrieved Person'' in the light of the provisions contained under Rule 22 and if the cut off period of procuring of the Certified Copy, which was a condition precedent, has expired much prior to the benefit of limitation extended by the Hon'ble Apex Court, the Appellant cannot contend

that, he would be entitled for the benefit of limitation for the purposes of condonation of delay of about 451 days and that too, when according to his own records, the Appellant has for the first time applied for the Certified Copy of the Judgment only on 30.04.2021, though, he had knowledge of the proceedings, which is a fact already been established, by documents on record.

44. The aforesaid argument of the learned Counsel for the Respondent, also stands fortified and proved by documents, from the remaining correspondences, which has been placed by the Appellant, as Annexure D (Page 69), which shows that the aforesaid communication has originated from the Appellant's mail dated 18.06.2019, which automatically leads to an unflinching inference that, owing to the fact that the gmail id as given in the aforesaid communication was that of the Appellant, presumption would be that, he had the knowledge of the proceedings and which further stands fortified by the gmail communication of 02.01.2020 as placed on record with the Counter Affidavit of the Respondent No. 2, which yet again refers to the gmail id of the Appellant, showing that, the aforesaid communication was well within the knowledge of the Appellant and hence, he cannot be permitted to take the benefit of the claim that he was not having the knowledge of the proceedings and hence, he would be entitled for grant of the benefit of the extended period of limitation. Further as the Appellant, as apparent from the documents on record, has failed to establish that he had applied for the Certified Copy within the prescribed period of limitation

and evidently, he himself has applied for procuring the same on 30.04.2021 as can be seen from the Certified Copy and he was supplied with the copy on the same day, then preferring of the Appeal only on 28.05.2021, though within the extended limitation period, will not grant the liberty to the Appellant to seek the benefit of limitation as prescribed under the Statute.

45. The aforesaid controversy has to be looked into from a different perspective also, because of the two emails which has been referred in the aforesaid paragraph which are generated from the email address of the Appellant. The Appellant's inaction to apply for the Certified Copy despite of having the knowledge of proceedings, would create a legal bar against him in the light of the provisions contained under Section 114 of the Evidence Act, because, the presumption which has been given therein will run against the Appellant and the knowledge would be deemed to be attributed to him, prior to the expiry of the period of limitation which is mandatory for the purposes of applying for the Certified Copy and thus, the entire action of the Appellant would be barred by an `Estoppel by Conduct'.

Section 114 of the Evidence Act is extracted hereunder:-

``***Section 114- Court may presume existence of certain facts.***

The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.''

On a simpliciter reading of the language contained under Sec. 114, there would be a presumption of existence of a fact which would mean the knowledge to the Appellant for the purposes of satisfying the parameters prescribed pertaining to the knowledge of procuring the Certified Copy, as it has been propounded by the Judgments of the NCLAT in the matters of *Sumit Singh Basisth and Innovators Cleantech Private Limited (Supra)* that knowledge for the purposes of procuring of the Certified Copy of the Order is not material because, the necessity of procurement of the Certified Copy of the Order is a precaution taken by the legislation and it cannot be permitted to be utilised as a tool for the person who is not diligent enough in getting the Certified Copy of the order for the purposes of enabling to derive the benefit of limitation in the light of the ratio of Judgment of the Hon'ble Apex Court in Suo Motu proceedings due to Covid-19 situation.

In yet another Judgment, rendered by the Principal Bench as reported in ***2023 SCC Online NCLAT 1416 in the matters of Kalyan Dombivli Municipal Corporation V. Reliance Infratech Ltd. & Anr.***, while making reference to the impact of V. Nagarajan's Judgment as reported in 2022 (2) SCC 244, the Principal Bench of NCLAT has observed in Para 4 of the Judgment, which is extracted hereunder:

> *``4. Timelines are of great significance in the I&B Code. The filing of the Appeal within 30 days from the date of order is for all concerned who feel aggrieved by the order. Learned counsel for the Appellant contends that*

the Appellant had no knowledge when order was passed, therefore, they could not file appeal, hence, limitation shall only begin on 31.07.2023 when they came to know about the order. In event, such contention is accepted, the resolution under the Code will become indefinite and uncertain, that is why timelines prescribed are important and for filing an appeal prescribed period is 30 days from the date of order, hence, limitation shall commence from the date when order is passed and shall not depend on the date when Appellant came to know of the order.''

On that, the date of knowledge of the proceedings, cannot be taken as to be a foundation for fixing the date of commencement of the period of limitation for preferring an Appeal, as it would create uncertainty in Resolution process and undermine the timelines prescribed in the Statute, thus striking at the very purpose and intention of the legislation.

46. From the aforesaid perspective and the reasons which have been given above;

(a) Ultimately, we come to a conclusion that the Appeal preferred by the Appellant on 28.05.2021 would be barred by limitation.

(b) The Appellant would not be entitled to take benefit of the Judgment of the Suo Motu Writ Petition of the Hon'ble Apex Court due to Covid-19 situation, for the reason being that the Appellant had knowledge of the proceedings, owing to the email communications placed already on record and since having knowledge, he ought to have satisfied the condition of applying for the Certified Copy of the Judgment

within the time frame as prescribed under Section 61 of the Code, which has been mandated by the various ratios of the Principal Bench, as referred to above, as regards the principle that it is necessary for a ``person aggrieved'', in order to seek exclusion from the period of limitation, to apply for the Certified Copy for taking the benefit of limitation, ought to have procured the Certified Copy, within the period of limitation prescribed under Sec. 61 of the Code.

(c) The Appellant has not denied the stand taken by the Respondent's Counsel, that since, all the email communications have generated from his email id, show that the knowledge of the proceedings was well within the knowledge of the Appellant, he was bound to have applied for the Certified Copy of the Judgment within the period of limitation to make his Appeal sustainable.

(d) As regards the question that whether the Appellant would be falling within the ambit of Suo Motu Writ Petition (C) No. 3 / 2020, we are of the view that even though the period of limitation of 45 days as prescribed under the Statute (including the condonable period of 15 days as per the proviso to Sub Section 2 of Section 61), ends within and not earlier to the commencement of the extended period of limitation as laid down by the Hon'ble Apex Court's Judgment, on account of Covid-19 situation, we cannot ignore the dictum laid down by the Hon'ble Apex

Court, as well as the Principal Bench of NCLAT that for availing the benefit of extension of limitation, either under the proviso to Sub Section 2 of Section 61 of the Code or under the Judgment of the Hon'ble Apex Court, he ought to have applied for the Certified Copy within the period of limitation and since, the period of limitation for procuring the Certified Copy of the Order had expired on 01.03.2020, much prior to 15.03.2020, i.e. the start of extended period of limitation as dictated by the Hon'ble Apex Court, the Appellant would not be entitled for the grant of benefit of limitation merely because of the fact that the outer limit of 45 days, including 15 days of extension under proviso to Section 61(2), was yet to expire when the extended period of limitation as per the Judgment of the Hon'ble Apex Court, came into being with effect from 15.03.2020.

(e) Since the record itself reveals that the Appellant has for the first time applied for the Certified Copy on 30.04.2021, he will not be entitled for the benefit of limitation since the Application for the Certified Copy itself was filed much beyond the Limitation period under Section 61 (1) of the I & B Code, 2016.

47. Further, the argument extended by the learned Counsel for the Appellant from the perspective that, since he being a ``party aggrieved'' and ``not a party to the proceedings'', Para 29 of V. Nagarajan (Supra) will not apply in his case,

is contrary to the very spirit of the V. Nagarajan's Judgment, as well as the Judgment rendered by the Principal Bench of NCLAT, where the aspect of knowledge has been determined by the Tribunal. Consequently, we can conclude that;

(a) The Appellant being attendee / member and having attended the CoC meetings had knowledge of the proceedings;

(b) Since he being attendee / member and having attended the CoC meetings though, despite not being a party to the proceedings, he would be treated as to be a `Person Aggrieved'', and ``having knowledge'' of proceedings to be brought within Sub Section 1 of Section 61.

(c) Since admittedly, the Appellant has applied for obtaining the Certified Copy, only on 30.04.2021, though, he had an opportunity to apply for the Certified Copy well within the period of Limitation which was expiring, prior to the commencement of the extended period of limitation imposed by the Suo Motu Writ Petition i.e. 15.03.2020, he will not be entitled for the benefit of the said extended period of limitation.

(d) Since, the Appellant being conscious of the fact that he had applied the Certified Copy, only on 30.04.2021 and was preferring the Appeal, only on 20.05.2021, and having not filed the Application for condonation of delay earlier, and subsequently filing it as an afterthought, will not enable the

Appellant to overcome the legal embargo to avail the benefit of the second proviso to Sub Section 2 of Section 61, for the purposes of deriving the benefit of extended 15 days of limitation since apparently, having not applied for the Certified Copy within the prescribed period of limitation.

48. Owing to the above, the Application in IA No. 361 / 2021 being the Application for condonation of delay, lacks merit and the same is accordingly dismissed. As a consequence thereto, the Company Appeal (AT) (CH) (INS) No. 177 / 2021, would too stand dismissed. The connected pending Interlocutory Applications, if any, stand closed.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

01/10/2024

SR/TM