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### NATIONAL SPOT EXCHANGE LIMITED ("NSEL") V MR. ANIL KOHLI, RESOLUTION PROFESSIONAL FOR DUNAR FOODS LIMITED

30 September 2021

#### **Introduction:**

Aggrieved by the order of the National Company Law Appellate Tribunal (**NCLAT**) refusing to condone a delay of 44 (forty-four) days in filing an appeal against the order passed by the National Company Law Tribunal (**NCLT**), the Appellant (i.e., National Spot Exchange Limited) preferred an appeal before the Hon'ble Supreme Court of India.

The Division Bench of the Hon'ble Supreme Court, however, dismissed the appeal stating, *inter alia*, that the limitation provisions in a special statute (such as the Insolvency and Bankruptcy Code 2016 (**IBC**), in the instant set of facts) would not only have to be construed strictly, but would also override conflicting provisions, if any, of the Limitation Act 1963 (**Limitation Act**). Therefore, the Court upheld the order of the NCLAT.

#### **Facts:**

The State Bank of India (**SBI**) had initiated corporate insolvency proceedings before the NCLT under Section 7 of the IBC against Dunar Foods Limited (**Corporate Debtor**). The NCLT admitted the petition and commenced the corporate insolvency resolution process (**CIRP**) against the Corporate Debtor. An Interim Resolution Professional (**IRP**) was appointed, in line with the established procedure. Thereafter, when the creditors of the Corporate Debtor were called upon to make their claims by the IRP, the Appellant submitted its own claims of approximately INR 673.85 crores. However, the IRP rejected the same in its entirety (citing that there was no privity of contract between the Appellant and the Corporate Debtor). Aggrieved by the same, the rejection of claims was challenged by the Appellant before the NCLT. The NCLT, however, dismissed the application preferred by the Appellant and upheld the decision of the IRP *vide* its order dated 6 March 2019.

Being dissatisfied with the said order, the Appellant preferred an appeal before the NCLAT. However, there was a delay of 44 (forty four) days in filing the said appeal beyond the statutorily permitted timeline of 30 (thirty) plus 15 (fifteen) days, in terms of section 61(2) of the IBC. The NCLAT, therefore, dismissed the appeal on the grounds of limitation, citing lack of power to condone delay beyond the period of 45 (forty-five) days.

**Points for determination:**

The primary question for determination before the Hon'ble Supreme Court was whether the NCLAT could have condoned the delay beyond the statutory limitation period of 30 (thirty) plus 15 (fifteen) days and whether, in the alternative, the Hon'ble Supreme Court could exercise its inherent powers under Article 142 of the Constitution of India to condone such delay.

**Held:**

The Hon'ble Supreme Court held that in a situation where the statute itself commands that a forum cannot condone delay beyond a certain period or can condone a delay up to a certain number of days but not more, then the same would come under the ambit of legislation and, therefore, would not be condonable even by taking recourse of the provisions of Article 142 of the Constitution of India. If the legislature intended to allow for the condonation of delay to any extent, clear provisions contrary to that intent would not exist.

The Court observed that the law (i.e., the IBC), as it stands, does not carve out an exception for any possible genuine reasons that may hinder the filing of an appeal by a party beyond the condonable period and, hence, the Courts must necessarily be bound by the same. Hardship, too, is no ground for the Court to override the Parliamentary mandate.

To reach the aforesaid conclusion, reliance was placed by the Hon'ble Court on, *inter alia*, the judgment passed in **ONGC Limited v Gujarat Energy Transmission Corporation Limited**<sup>1</sup>, wherein a delay beyond 120 (one hundred and twenty) days was held non-condonable as per section 125(2) of the Electricity Act, 2003. The Hon'ble Court also relied upon the judgments / orders passed in **Teri Oat Estates (P) Ltd. v U.T. Chandigarh**<sup>2</sup>, **Popat Bahiru Govardhane v Special Land Acquisition Officer**<sup>3</sup>, and in **Rohitash Kumar v Om Prakash Sharma**<sup>4</sup> and stated that mere hardship, sympathy or sentiment by itself cannot be a ground for passing an order where no legal right stands due to clear intent of a statute.

On the question of whether the provisions of the IBC would prevail over the provisions of the Limitation Act, the Court unequivocally held that the provisions of the IBC, being a special statute, would prevail over the provisions of the Limitation Act, which is a general statute. Reliance was placed on the decision in **Union of India v. Popular Construction Co.**<sup>5</sup> wherein, in a similar set of facts, it was held that the Arbitration & Conciliation Act, 1996 being of special nature, the period of limitation specified thereunder (under section 34) would prevail over the general limitation period of appeal under section 5 of the Limitation Act.

The Supreme Court held that in view of the settled propositions of law, it cannot be said that the NCLAT committed any error in dismissing the appeal on the ground of limitation. The Court also observed that even in the merits of the instant case, the application for the certified copy of the order passed by the NCLT was made after 34 (thirty-four) days of it being passed (i.e., beyond the initial 30 (thirty) day limitation period). Thus, the appeal was dismissed.

**Conclusion**

This verdict continues in the long line of decisions of the Supreme Court and other subordinate courts providing clear jurisprudence and making it clear that in matters of limitation, strict interpretation of statute is a must. Even in a genuine situation wherein an applicant is not able to file an appeal within the statutory period of limitation (and also the extended timelines), Courts do not have any authority to carve out an exception - as the same would tantamount to judicial overreach.

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<sup>1</sup> (2017) 5 SCC 42

<sup>2</sup> (2004) 2 SCC 130

<sup>3</sup> (2013) 10 SCC 765

<sup>4</sup> (2013) 11 SCC 451

<sup>5</sup> (2001) 8 SCC 470