NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI

(APPELLATE JURISDICTION)
TA (AT) No.194/2021
(Company Appeal (AT) (Ins) No.469/2021
(IA Nos.1205, 1206 & 1207/2021)

In the matter of:

Income Tax Department Through
Deputy Commissioner of Income Tax … Appellant

V

ILC Industries Ltd. & 2 Ors. ...Respondents

Present :

For Appellant : Mr. J Narayanaswamy, Advocate
For Respondents : Mr. Ankur S. Kulkarni, Advocate for R1

ORDER
(Hybrid Mode)

27.06.2024:

The Appellant herein has preferred this Appeal under Section 61(1) of I & B Code, 2016, wherein it puts a challenge to the Impugned Order of 13.01.2020, as it has been passed by the NCLT, Bangalore Bench in IA No. 12/2020, as preferred in CP(IB) No.155/BB/2018. The Company Appeal is accompanied with a Delay Condonation Application being IA No. 1207/2020. As per the explanation given for the purposes of seeking a condonation of delay, the Appellant has submitted that he was not a party to the proceedings and hence he could not get knowledge of the order and the observations which were made therein which were affecting the Appellant. Be that as it may, in para 3 & 4 of the Condonation Delay Application, it is an admitted case of the Appellant that the Appellant got the knowledge of the order when he received the order on 13.02.2020. If that is to be accepted as to be the date of knowledge of the order,

then according to the law as settled, the Appellant was supposed to file his Appeal within 30 days period from that date and to at the minimum apply for the certified copy of the order well within the 30 days period starting from 13.02.2020. Admittedly the same was not done and the Appeal was filed on 28.06.2021 along with the Delay Condonation Application and an exemption application being IA No. 1205/2020, seeking exemption to file a certified copy of the Judgement. The Appellant seeks condonation of delay stating that as per Section 61(2) of I & B Code, he was to file his Appeal by 14.03.2020, that Covid-19 Pandemic disrupted all activities period of limitation in all proceedings stood extended with effect from 15.03.2024 by an order of Hon'ble Supreme Court, he filed his Appeal on 28.06.2021 well within this extended limitation period, there is only one day delay from 14.03.2020 to 15.03.2020 and hence such delay may be condoned but it is seen that till date, the certified copy has not supplied by the Appellant. In view of the fact that even from the date of knowledge of the order, the Appellant has not applied for the certified copy of the order. In view of the same, he cannot get the benefit of the extension of limitation period further, as argued by the Learned Counsel for the Respondent in his objection to the Delay Condonation Application where he has contended that in the Judgement rendered by the Hon'ble Apex Court in ***Sagufa Ahmed & Ors. Vs. Upper Assam Polywood Products Private Limited & Ors.*** as reported in ***2021 Volume II SCC Page 317***., it has been made clear that the extension of timeline on account of Covid-19 Pandemic will not be available to those cases where the 30-day period has already

expired. Particularly, he has drawn the attention of this Tribunal to the contents of Para 17 which is 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 re³. What was extended by the above order[3] 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[3] 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."*

The underlying principle laid down by the Hon'ble Apex Court in its Suo-moto Judgement is that the benefit of extension of limitation period due to the prevalent Covid-19 situation would not be extended in those cases where the delay could be condoned in the exercise of discretion conferred by the statute that is, in the instant case under proviso of Section 61(2) of I & B Code, 2016. Hence this grant of extension of period of limitation by virtue of Suo-moto Judgement of the Hon'ble Apex Court due to Covid-19 situation will not come into play in the instant ease as the Appellant himself has not satisfied, the prescription of limitation as provided under Section 61(1) of I & B Code, 2016, for preferring of an Appeal and also admittedly did not apply for the certified copy of the impugned

Judgement within a period of 30 days, even from the date of knowledge, if it is determined to be date from which limitation period will be counted. In view of the aforesaid, since the Appeal has not been preferred within the prescribed period of limitation as statutorily described, The Company Appeal would stand dismissed being barred by limitation.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

RO/TM