

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL PRINCIPAL BENCH
NEW DELHI**

Company Appeal (AT) No. 39 of 2021

In the matter of:

Reserve Bank of India

....Appellant

Vs.

SREI Equipment Finance Ltd.

....Respondent

Present

**For Appellant: Mr. Arun Kathpalia, Sr. Advocate with Mr. VP Singh,
Ms. Vatsala Rai, Sayobani Basu and Vanya Chhabra,
Advocates**

**For Respondent: Mr. Joy Saha, Sr. Advocate with Abhijeet Sinha, Mr.
Dipen Chatterjee, Mr. Rusha Mitra, Mr. Saptarshi
Mandal, Advocates**

**ORDER
(31st March, 2021)**

Jarat Kumar Jain: J.

This Order shall govern disposal of I.A. No. 596 of 2021 an Application for condonation of delay and I.A. No. 595 of 2021 an Application for ad-interim stay. These applications are filed by Appellant under Rule 11 of NCLAT Rules, 2016.

2. Learned Senior Counsel for the Appellant submits that vide order dated 30.12.2020 NCLT, Kolkata Bench (In brief Tribunal) passed certain directions which are contrary to law. The Appellant was not party before the Tribunal. On 01.01.2021 the Appellant was served with the copy of the notice under Section 230 (5) of the Companies Act, 2013 (In brief 'the Act') with the

intimation about the impugned order dated 30.12.2020. From the date of service of notice (01.01.2021) the Appeal is filed within 77 days (19.03.2021). In this regard the contentions raised by the Learned Counsel for the Appellant are two-fold namely (i) due to an outbreak of Covid-19 Pandemic. Hon'ble Supreme Court in the case of *Suo Motu Writ Petition (Civil) No. 03 of 2020* vide order dated 08.03.2021 extended the prescribed period of limitation. In the light of this order the Appeal is within limitation and (ii) The Appeal is filed within 77 days i.e the delay of 32 days. The Appellate Tribunal as per proviso of Section 421 (3) of the Act, is empowered to condone the delay of 45 days, on the satisfaction that the Appellant was prevented by sufficient cause from filing the Appeal within prescribed period of limitation.

3. Learned Senior Counsel for the Respondent vehemently opposed the Application for condonation of delay and he submits that Hon'ble Supreme Court in *Suo Motu Writ Petition (Civil) No. 3 of 2020* has only extended the period of Limitation and not the period up to which delay can be condoned in exercising of discretion conferred by the statute. For this purpose, he placed reliance on the Judgment of Hon'ble Supreme court in the case of *Sagufa Ahmad Vs. Upper Assam Plywood Products Pvt. Ltd. Civil Appeal No. 3007 – 3008 of 2020* decided on 18.09.2020. There is no ground for condonation of delay hence the Appeal is liable to be dismissed as time barred.

4. After hearing learned counsel for the parties, we have examined the issue of Limitation.

5. **Contention (i)** Hon'ble Supreme Court in the case of Suo Motu Writ Petition (Civil) No. 03 of 2020 vide order dated 08.03.2021 extended the prescribed period of limitation and passed certain directions as per clause 2 of the direction in cases where 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 limitation period of 90 days from 15.03.2021. In the event of actual balance period of limitation remaining, w.e.f. 15.03.2021, is greater than 90 days, that longer period shall apply. In this Appeal the prescribed period of limitation of 45 days expired on 15.02.2021 i.e. between 15.03.2020 to 14.03.2021. Thus the appellant has limitation period 90 days from 15.03.2021 till 13.06.2021. Whereas the Appeal is filed on 19.03.2021. Thus the Appeal is within limitation.

6. **Contention (ii)** Admittedly, the Appellant was not party in C.P. No. 1492/KB/2020, the Appellant served with the notice and copy of the impugned order dated 30.12.2020 on 01.01.2021 and the Appeal was filed on 19.03.2021 i.e. within 77 days. Section 421 (3) of the Act provides that the Appeal shall be filed within a period of 45 days from the date on which the copy of the order of the Tribunal is made available to the person aggrieved and by virtue of the proviso to Section 421(3) of the Act, the Appellate Tribunal is empowered to condone the delay up to a period of 45 days. If it is satisfied that the Appellant was prevented by sufficient cause from filing the Appeal within prescribed period. In the present case the Appellant received the copy of the order on 01.01.2021. Thereafter, filed an Application before Tribunal on 21.01.2021 for permission to intervene. The intervention Application was

listed on 17.02.2021 and 16.03.2021 but no effective order was passed. Thereafter, spend some time in collecting the relevant documents/informations and in getting approval for filing Appeal. We are of the opinion that the Appellant has explained the delay of 32 days in filing the Appeal, this Appellate Tribunal is empowered to condone the delay for 45 days. The facts of Sagufa Ahmad's case (Supra) are quite different. In that case prescribed period has been expired on 02.02.2020 and the extended period of 45 days expired on 18.03.2020. The Appellant did not file the Appeal on or before 18.03.2020 but file it on 20.07.2020. Hon'ble Supreme Court taking into consideration *Suo Motu Writ Petition (Civil) NO. 03 of 2020* order dated 23.03.2020 explained that "what was extended by the above order of this Court was only, the period of limitation and not the period upon which delay can be condoned in exercise of discretion conferred by the statute." Therefore, this Judgment is not helpful to the Respondent.

7. With the aforesaid, we are of the considered view that as per the order of Hon'ble Supreme Court in the case of *Suo Motu Writ petition (Civil) No. 03 of 2020* the Appellant is entitled to get benefit of extended period of limitation. Thus the Appeal is within limitation. Even otherwise the Appeal is filed within 77 days and the delay of 32 days is explained by the Appellant. The Tribunal is empowered to condone the delay of 45 days. The Application is allowed and delay is hereby condoned.

8. Now, we have considered the I.A No. 595 of 2021 an Application for Ad-interim stay.

9. The Respondent 'Srei Equipment Finance Ltd.' (SEFL) filed an application No. 1492 /KB/2020 for seeking direction of the Tribunal for convening and holding separate meetings of certain class of creditors of the Company under Section 230 of the Act, in connection with a proposed Scheme of Arrangement of the Company and its creditors covered under the Scheme for obtaining consent from such creditors. While disposing of the said Application the Tribunal in Para 34 of the impugned order passed certain directions, against the Appellant which are as under:-

“all governmental or regulatory authorities shall be estopped from taking any coercive steps including reporting in any form and/or changing the account status of the Company”

10. Being aggrieved with this direction, the Appellant has filed this Appeal.

11. Learned Sr. Counsel for the Appellant submits that in the impugned order Ld. Tribunal has passed aforesaid directions against the Appellant 'Reserve Bank of India' without giving any opportunity of hearing. The Appellant is statutory body and regulatory authority functions under Banking Regulations Act, 1949. The Tribunal has exceeded his jurisdiction while passing such an order and prevented the statutory body to act as regulatory authority.

12. It is further submitted that the Tribunal while exercising jurisdiction under Section 230 of the Act, r/w Rule 11 of NCLT Rules, 2013 is not empowered to pass an order, contrary to the master circular on prudential norms on income recognition, Asset classification and provisioning pertaining to advances issued on 01.07.2015 by RBI (Appellant). This Appellate Tribunal

in the case of Union Bank of India Vs. Infrastructure Leasing and Financial Services Ltd. & Ors. CA (AT) 346 of 2018 passed ad-interim order restraining the bank from declaring the loan accounts of IL & FS Group Companies as Non-Performing Asset (NPA). This Appellate Tribunal after considering the submission on behalf of RBI modified the order on 02.05.2019 and allow the banks to classify the loan accounts of the Group Companies of IL & FS as NPA. Thus, the said directions in the impugned order is not sustainable in law, therefore, it be stayed.

13. Ld. Sr. Counsel for the Appellant also drew our attention towards the Judgments of Hon'ble Supreme court in the Case of Keshav Lal Khemchand and Sons vs. Union of India (2015) 4 SCC 770 (Paras 9, 25, 26, 36(2), 40) Hindustan Lever Vs. State of Maharashtra (2004) 9 SCC 438 (Para 9) Miheer H. Mafat Lal Vs. Mafat Lal Industries Ltd. (1997) 1 SCC 579 (Para 29)

14. Ld. Sr. Counsel for the Respondent vehemently opposed the prayer and submits that the Appellant has filed an Application before the Tribunal for modification the order during the pendency of application the Appeal has been filed, thus, it is a case of forum shopping. It is also submitted that the aforesaid circular does not apply to any of the parties of the application under Section 230 of the Act. They are not financial institution.

15. Hon'ble Kolkata High Court in the case of Higher Purchase and Lease Association & Anr. Vs. RBI & Ors. WPA No. 9255 of 2020 vide order dated 10.09.2020 passed an order that RBI shall be restrained from taking any coercive action against the NBFCs (Non-Banking Financial Companies)

comprising the Petitioner in terms of the exclusion clause appearing in Item 2 of the Annexure to the RBI Circulation dated 06.08.2020 (Reference No. RBI/2020-2021/16 & DOR No. BP.BC/3/21.04.048/2020-2021) till January, 2021 or until further orders, whichever is earlier.

16. It is further submitted that class of creditors that are covered under the scheme are not regulated by the RBI. Further, these creditors cannot in any manner declared the accounts of the Company NPA. In such circumstances, no question arises of the RBI being prejudiced with the order dated 30.12.2020 nor any question arises of these creditors declaring the accounts of the Company as NPA. None of the master circulars of the RBI referred to in this Application is applicable to the transactions of the Company with the aforesaid creditors covered under the scheme proposed by the Company with the secured debenture holders and unsecured debenture holders, secured ECB lenders, unsecured ECB lenders. The 07th Jun, 2019 circular of RBI is applicable to the proposed scheme of arrangement. It is incorrect to say that the Tribunal is not empowered to pass any order contrary to the directions or the order issued by the RBI

17. It is submitted that the directions are not prejudicial to the RBI or contrary to the any of the circulars issued by the RBI. The Appellant is not entitled for any ad-interim order, therefore, the Application is liable to be dismissed.

18. At this juncture, Ld. Instructing Counsel for the Appellant submits that he undertakes to withdraw the Application for modification of the order pending before the NCLT.

19. After hearing Ld. Counsels for the parties we have considered the submissions and gone through the record.

20. The scope of this Appeal is limited to the extent that whether the Tribunal while exercising the jurisdiction under Section 230 of the Act, can pass aforesaid directions against the RBI.

21. At this stage, if we express any opinion in regard to the submissions of Ld. Counsels for the parties it will affect the merits of the Appeal. However, we are of the view that if the operation of the aforesaid direction is stayed it will not prejudice to the proceedings pending before the Tribunal. Therefore, we deem it appropriate to pass ad-interim order. In Para 34 of the impugned order following direction is stayed till pendency of this Appeal.

“all governmental or regulatory authorities shall be estopped from taking any coercive steps including reporting in any form and/or changing the account status of the Company”

Thus, I.A No. 595 of 2021 is allowed as indicated above.

[Justice Jarat Kumar Jain]
Member (Judicial)

[Mr. Kanthi Narahari]
Member (Technical)

SC