

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**I.A. No. 1857 of 2020**

**with**

**Company Appeal (AT) (Insolvency) No. 690 of 2020**

**IN THE MATTER OF:**

**Phoenix ARC Pvt. Ltd.**

**(Trustee of Phoenix Trust FY – 14-9)**

**...Appellant.**

**Versus**

**Nagaur Water Supply Company Pvt. Ltd.**

**...Respondent.**

**Present:**

**For Appellant: Mr. Amit Singh Chadha, Sr. Advocate with Mr. Suresh Dutt Dobhal and Mr. Nirmal Goenka, Advocates**

**For Respondent: Mr. Pardhuman Gohil Ranu Purohit, Ms. Tanya Srivastava and Ms. Jasleen Binda, Advocates**

**ORDER**  
**(Virtual Mode)**

**13.01.2021** Heard Learned Counsel for Respondent. She submits that the Application for Condonation of Delay has been filed by the Appellant without mentioning how much delay is there. She submits that Impugned Order was passed on 27<sup>th</sup> May, 2020 and the Appellant took certified copy on 2<sup>nd</sup> July, 2020 and the Appeal was filed on 23<sup>rd</sup> July, 2020. She submits that the Appellant has stated in Para 2 of the Application as under:

*“2. The Appellant did not receive the free copy. However, on coming to know about passing of impugned order dated 27.05.2020 during lockdown, local counsel of the Appellant applied for certified copy of the impugned order and the*

*same was prepared on 02.07.2020 and made available to the Appellant thereafter.”*

2. According to her, the Application itself was filed after 45 days. She submits that the Appeal page 17 states that the Appellant came to know about the pronouncement of the order dated 27<sup>th</sup> May, 2020 and applied for certified copy on 02.07.2020. According to her, the period of Appeal for filing the Appeal in IBC under Section 61 is 30 days and this Tribunal can condone only 15 days. The learned Counsel for Respondent submits that Hon'ble Supreme Court of India in the Judgment in the matter of “Sagufa Ahmad vs. Upper Assam Plywood Pvt. Ltd.” Civil Appeal No. 3007-3008 of 2020 vide Order dated 18<sup>th</sup> September, 2020, has protected only the “period of limitation” from lapsing in pandemic but not the discretionary part of provisions which provide the Appellate Authority discretion to condone the delay.

Learned Counsel for Respondent also submits that the order was pronounced through Video Conferencing and if the Appellant did not attend the same, it is his responsibility.

3. The Learned Counsel for the Appellant submits that 27<sup>th</sup> May, 2020 was a period of lockdown and there was no easy access to the Tribunals and the orders which were being passed. The Learned Counsel refers to Orders passed by Hon'ble Supreme Court in Suo moto Writ Petition Civil No. 3 of 2020 on 23<sup>rd</sup> March, 2020 which reads as under:

*“This Court has taken Suo Motu cognizance of the situation arising out of the challenge faced by the country on account*

*of Covid-19 Virus and resultant difficulties that may be faced by litigants across the country in filing their petitions/applications/suits/appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State).*

*To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15<sup>th</sup> March 2020 till further order/s to be passed by this Court in present proceedings.*

*We are exercising this power under Article 142 read with Article 141 of the Constitution of India and declare that this order is a binding order within the meaning of Article 141 on all Courts/Tribunals and authorities.*

*This order may be brought to the notice of all High Courts for being communicated to all subordinate Courts/Tribunals within their respective jurisdiction.*

*Issue notice to all the Registrars General of the High Courts, returnable in four weeks.”*

4. It is argued that the Impugned Order was passed on 27<sup>th</sup> May, 2020 when there was a lockdown and no free copy was supplied to the Appellant. Subsequently when Appellant came to know of the impugned order the Appellant moved the Adjudicating Authority for a copy. It is argued that when the order Company Appeal (AT) (Insolvency) No. 690 of 2020

itself was passed during lockdown on 27<sup>th</sup> May, 2020 which is subsequent to the date of 15<sup>th</sup> March, 2020 recorded by the Hon'ble Supreme Court in order dated 23<sup>rd</sup> March, 2020, the "period of limitation" of 30 days itself is not triggered and is protected and there is no question of going to the period of discretion of 15 days to condone the delay. The Learned Sr. Counsel submits that this order dated 23<sup>rd</sup> March, 2020 of the Hon'ble Supreme Court is still in operation and thus the protection continues to the basic period itself. As such it is submitted that the Appeal can not be treated as time-barred.

5. We find substance in the arguments made by the Learned Counsel for the Appellant. The Application for Condonation of Delay stands disposed of as we do not treat the Appeal as filed with delay.

6. Coming to the Appeal, the Learned Counsel for the Appellant states that concerned Notifications with regard to the transfer of winding up proceedings which were pending when IBC came into force are required to be filed for the purpose of arguments.

The same may be filed before next date.

List the Appeal 'For Admission (After Notice)'Hearing **on 28<sup>th</sup> January, 2021.**

**[Justice A.I.S. Cheema]**  
**Member (Judicial)**

**[Mr. V.P. Singh]**  
**Member (Technical)**

Basant B./md.

Company Appeal (AT) (Insolvency) No. 690 of 2020