

# IBC DOSSIER

Bulletin on Landmark Judgments under IBC, 2016



## **Nitendra Kumar Tomer, Suspended Director, Ambro Asia Private Limited Vs. Unox S.P.A. and another**

### **Brief Facts**

In the present case, an appeal was filed under Section 62 of the Insolvency and Bankruptcy Code, 2016 by Nitendra Kumar Tomer, suspended director of Ambro Asia Private Limited, against the judgment of the NCLAT affirming the order of the NCLT dated 18.04.2024, whereby an application under Section 9 filed by Unox S.P.A. was admitted. Upon admission of the application, an Interim Resolution Professional (IRP) was appointed and the management of the corporate debtor stood vested in him.

Despite this, an appeal was filed before the NCLAT in the name of the corporate debtor by the suspended director. The NCLAT noted that such an appeal was not maintainable, as post-admission, the corporate debtor could only be represented by the IRP. However, the NCLAT permitted the appellant to amend the memo of appeal and subsequently allowed the appeal to be prosecuted in the name of the suspended director. The issue before the Supreme Court was whether such conversion of

an incompetent appeal into a maintainable one after expiry of limitation was permissible in law.

## **Decision**

The Supreme Court dismissed the appeal and held that the appeal filed in the name of the corporate debtor by a suspended director after commencement of CIRP was wholly incompetent and not maintainable in law. It observed that upon appointment of the IRP, the management of the corporate debtor vests exclusively in the IRP under Section 17 of the Code, and the suspended director has no authority to represent the corporate debtor.

The Court further held that such an appeal is not a mere procedural defect capable of being cured, but a fundamental illegality going to the root of maintainability. The NCLAT erred in permitting amendment of the appeal after expiry of the limitation period prescribed under Section 61(2) of the Code, thereby effectively allowing a time-barred appeal to be entertained.

Emphasizing that limitation under the IBC is strict and mandatory, the Court held that once the prescribed period (30 days with a condonable delay of 15 days) expires, no further indulgence can be granted. Accordingly, the appeal was held to be non-maintainable and dismissed without examining merits.

## **Link of the Order**

<https://ibbi.gov.in/uploads/order/5e132eb0561a7e13fa7ba7c83e3593ac.pdf>

