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27th January 2023

"It is never too late to be what you might have been"

➤ **No Condonation Beyond 45 Days, IBC Overrides Limitation Act : NCLAT Chennai**

The National Company Law Appellate Tribunal ("NCLAT"), Chennai Bench, comprising of Justice M. Venugopal (Judicial Member) and Ms. Shreesha Merla (Technical Member), while adjudicating an appeal filed in M/s. Platinum Rent A Car (India) Pvt. Ltd. v M/s. Quest Offices Limited, has held that Section 238 of IBC overrides Section 12 of the Limitation Act, 1963. The Bench declined to condone a delay of 55 days in filing of appeal, which was caused due to time taken to obtain certified copy of order. The Bench further held that Rules of Procedure neither create any right in favour of a person, nor create a Cause of Action. If a Statute requires a certain remedy to be exercised in a particular manner and time, then the same cannot be exercised in any other manner except for the one specified.

Background Facts M/s. Quest Offices Limited ("Financial Creditor") filed a petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC"), seeking initiation of Corporate Insolvency Resolution Process ("CIRP") against M/s. Platinum Rent A Car (India) Pvt. Ltd. ("Corporate Debtor"). On 08.06.2022 the Adjudicating Authority admitted the Corporate Debtor into CIRP over a default of Rs.10,95,01,185/-. The Corporate Debtor applied for certified copy of the Order dated 08.06.2022 on 21.07.2022, which was provided on 26.07.2022.

Therefore, the Corporate Debtor filed an appeal against Order dated 08.06.2022 before NCLAT on 03.08.2022, i.e. after 55 days of delay in totality. The Corporate Debtor prayed for condonation of delay of 55 days as time was spent in obtaining certified copy of the Order.

Relevant Law Section 12 of the Limitation Act, 1963

"Section 12. Exclusion of time in legal proceedings.— (1) In computing the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned, shall be excluded.

(2) In computing the period of limitation for an appeal or an application for leave to appeal or for revision or for review of a judgment, the day on which the judgment

complained of was pronounced and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be revised or reviewed shall be excluded. (3) Where a decree or order is appealed from or sought to be revised or reviewed, or where an application is made for leave to appeal from a decree or order, the time requisite for obtaining a copy of the judgment 1[***] shall also be excluded.

(4) In computing the period of limitation for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded. Explanation.—In computing under this section the time requisite for obtaining a copy of a decree or an order, any time taken by the court to prepare the decree or order before an application for a copy thereof is made shall not be excluded.”

NCLAT Verdict

The Bench observed that an appeal can be filed before NCLAT against an order passed by the Adjudicating Authority within 30 days of such order. The permissible delay for filing of an appeal is 15 days under IBC. Therefore, the prescribed time to file a reply can be of maximum 45 days in total. Further, the procedural formalities (including the time limit) given under IBC must be followed in true ‘letter and spirit’, as Speed is essence of IBC.

The Rules of Procedure neither create any right in favour of a person, nor create a Cause of Action. If a Statute requires a certain remedy to be exercised in a particular manner and time, then the same cannot be exercised in any other manner except for the one specified.

The Bench held that NCLAT does not have any power to condone a delay beyond 45 days and cannot extend its Judicial arm of generosity, as IBC is a self-contained and inbuilt legislation.

“Also an invocation of Section 12 of the ‘Limitation Act’, 1963, will be of no assistance to the ‘Petitioner’ / ‘Appellant’ because of the ‘overriding effect’ of the ‘ingredients of Section 238 of the ‘Insolvency & Bankruptcy Code, 2016’.” The Bench held that Section 12 of the Limitation Act, 1963 cannot be invoked as Section 238 of IBC has an overriding effect. The application for condonation of delay was dismissed. Accordingly, the Bench also dismissed the appeal.

Source: Live Law

Read Full news at: [No Condonation Beyond 45 Days, IBC Overrides Limitation Act : NCLAT Chennai \(livelaw.in\)](#)

➤ **After Adoption Of Swiss Challenge Method, RA Not Allowed To Submit Revised Plan: NCLAT Delhi**

The National Company Law Appellate Tribunal (“NCLAT”), Principal Bench, comprising of Justice Ashok Bhushan (Chairperson) and Mr. Barun Mitra (Technical Member), while adjudicating an appeal filed in Jindal Stainless Ltd. v Mr. Shailendra

Ajmera & Anr., has held that after adoption of Swiss Challenge Method to find out the best plan, one Resolution Applicant cannot be allowed to submit a revised plan.

Mittal Corp Limited (“Corporate Debtor”) was admitted into Corporate Insolvency Resolution Process (“CIRP”) on 10.11.2021 by the Adjudicating Authority. Mr. Shailendra Ajmera was appointed as the Resolution Professional. The Resolution Professional received six resolution plans for the Corporate Debtor including plans from Jindal Stainless Ltd. and Shyam Sel and Power Ltd. The Resolution Applicants were communicated the rules of Challenge Process and gave their unconditional acceptance to the same.

On 15.07.2022, the Challenge Process was conducted and continued for seven rounds, until only one competing Resolution Applicant remained in the Challenge Process. All the Resolution Applicants were notified that the signed and compliance Resolution Plan must be submitted by 18.07.2022. Jindal Stainless Ltd., Shyam Sel and Power Ltd. alongwith two other resolution applicants submitted their amended Resolution Plans by 18.07.2022.

On 19.07.2022, Shyam Sel and Power Ltd. addressed an e-mail to the Resolution Professional, stating its willingness to submit the entire NPV offered as upfront payment within 30 days. Further, Shyam Sel and Power Ltd. also filed an application before the Adjudicating Authority, seeking direction to the Resolution Professional to consider the offer dated 19.07.2022 and place the same before the Committee of Creditors (“CoC”).

The Adjudicating Authority vide an order dated 11.08.2022, directed the CoC to consider the revised resolution plan of Shyam Sel and Power Ltd. and take an informed decision. In pursuance of the said Order, the Resolution Professional stopped the voting process which was underway. Jindal Stainless Ltd. filed an appeal before NCLAT against the Order dated 11.08.2022.

Contentions Of Appellant Jindal Stainless Ltd. (“Appellant”) submitted that the CoC decided to adopt Challenge Process and resolution applicants, including Shyam Sel and Power Ltd., participated in the same. The resolution applicant Shyam Sel and Power Ltd., who made the highest offer in the Challenge Process, had no right to further revise its plan. The adoption of Challenge Process by the CoC was in accordance with Regulation 39(1A)(b) of the CIRP regulations, as has been substituted w.e.f. 30.09.2021. The CIRP has to be completed within timeline and the Adjudicating Authority’s Order would delay the process, which is not the object of IBC.

Issue

Whether after closure of Challenge Process on 15.07.2022 and consequent receipt of Resolution Plan by 18.07.2022, the Adjudicating Authority could have directed for consideration of the revised plan submitted by Shyam Sel and Power Ltd. thereafter?

NCLAT Verdict

The Bench placed reliance on the Supreme Court judgment in Ngaitlang Dhar vs. Panna Pragati Infrastructure Private Limited & Ors., Civil Appeal Nos. 3665-3666 of 2020, and held that after adoption of Swiss Challenge Method to find out the best plan, one Resolution Applicant cannot be allowed to submit a revised plan.

The Bench observed that the decision of CoC to vote on the Resolution Plan after completion of Challenge Process and not to further accept any modification of the plan, should not be interfered with. The Application was filed by Shyam Sel and Power Ltd. on 07.08.2022, when CoC had already resolved the vote on all the plans and voting had also commenced w.e.f. 07.08.2022. “The Adjudicating Authority without there being any valid reason ought not to have been interfered with the voting on the Resolution Plans which had already commenced w.e.f. 07.08.2022. As result of the order of the Adjudicating Authority the process of voting which had commenced on 07.08.2022 was abandoned by the Resolution Professional.”

The Bench set aside the Order dated 11.08.2022 passed by the Adjudicating Authority. Further, the Resolution Professional has been directed to initiate fresh voting process on the Resolution Plans received in the process which may be completed within the period of one month.

Source: Live Law

Read Full news at: [After Adoption Of Swiss Challenge Method, RA Not Allowed To Submit Revised Plan: NCLAT Delhi \(livelaw.in\)](https://www.livelaw.in/news/nclat-delhi-swiss-challenge-method-ra-not-allowed-to-submit-revised-plan)

