



INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

(Company formed by ICAI under Section 8 of the Companies Act 2013)

IBC Case Law Capsule

Volume 05 | Number 51

(December 19, 2022)

M.K.Resely and Ors. Vs. & Union Bank of India and Ors.
IA No 990/2022 in Company Appeal No.337/2022
Date of NCLAT's Judgement: November 24, 2022.

Facts of the Case: -

M.K. Resely and Ors. (hereinafter referred as Petitioners), feeling aggrieved by AA's order dated 21.01.2022 to add the 'personal properties' of the petitioners in the liquidation estate of the CD filed the Writ Petition with the High Court on 26.01.2022. The Writ Petition was dismissed on 22.04.2022 following which the Petitioner filed the Writ Appeal on 25.04.2022 (against the dismissal of Writ Petition). Later, The High Court vide its judgment dated 22.06.2022 dismissed the Writ Appeal and permitted the petitioner to prefer an appeal within 2 weeks from the date of judgement. Accordingly, the Petitioner preferred this very appeal before the Appellate Tribunal seeking to exclude the period from 25.01.2022 till 22.06.2022 in computing the "Period of Limitation".

The Petitioner, citing the judgement of Supreme Court in *Kalparaj Dharamshi and ors Vs. Kotak Investment Advisors Limited and ors*, and in *State Bank of India Vs. Visa Steel Ltd.* submitted that Provision of Section 14 of the Limitation Act 1963 will apply to the proceedings and the period from 25.01.2022 till 22.06.2022 is liable to be excluded. The petitioner contended that the said appeal is presented well within the specified period under Section 61 of the IBC.

The Union Bank of India and ors (hereinafter referred as "Respondent") submitted that the as per the order of the High Court, the last date for filing the appeal was 05.07.2022 whereas the appeal was filed on 06.07.2022. Further the Respondent submitted that the Appeal was lodged by the Petitioner without attaching the Certified Copy of the AA's Order which is violation of Rule 22(2) of NCLAT Rules 2016. The Respondent cited the case of *V. Nagarajan Vs Sks Ispat and Power Limited*, wherein the High Court was of view that appellant having failed to apply for a certified copy, rendered the appeal filed before the NCLAT as clearly barred by limitation.

The question raised before the NCLAT is that whether the appeal filed by the Petitioner is barred by limitation or not.



INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

(Company formed by ICAI under Section 8 of the Companies Act 2013)



NCLAT's Observations: -

The Appellate Tribunal stated that Section 14 of the Limitation Act was enacted to exempt a particular period covered by a "Bonafide Litigious Activity" and 'Good faith' is required to be established to press Section 14 into service. The Tribunal pointed that the period of limitation for filing a suit/appeal is fixed by a Statute and it cannot be deemed to be excluded or extended as a matter of routine.

The Tribunal was of view that, even though the Petitioner have indulged in Bonafide Litigious Activity in Good faith and by applying the ingredients of Section 14 of the Limitation Act the period from 25.01.2022 till 22.06.2022 is liable to be excluded, it cannot be forgotten that the Hon'ble High Court had permitted the Petitioner to prefer the appeal within two weeks from the date of judgement (dated 22.06.2022).

Going by the tenor and spirit of the Judgement of the High Court, the last date for filing the appeal was 05.07.2022 and there is a delay of 'One day' in preferring the appeal.

Order/Judgement: The filing of the Appeal is beyond the prescribed time limit granted by the Hon'ble High Court

Case Review: - Appeal is Rejected. No Costs.