

**Learning Curve-1005**

November 03, 2023

**If rectification order is made by the AA, the period of limitation for filing an appeal u/s 61 of IBC will start from the date of rectification order.**

CASE TITLE	Ashok Tiwari V/s Tattva & Mittal Lifespaces Private Limited
CASE CITATION	Company Appeal (AT) (Insolvency) No. 729 of 2023
DATE OF ORDER	October 31, 2023
COURT/ TRIBUNAL	NCLAT, New Delhi

**BRIEF FACTS:**

The AA rejected the application filed by the appellant as non-maintainable on the ground that default occurred in the period excluded as per the provisions of Section 10A of the IBC. The appellant then applied for rectification of the said order, which was partly allowed. The appellant then preferred an appeal against the impugned order. The Respondent questioned the maintainability of the present Appeal on the grounds of period of Limitation under Section 61(2) of the IBC.

**DECISION:**

The Hon'ble NCLAT, New Delhi, allowed the appeal and held that,

*"We have considered the submissions made by both sides and we find that the Appellant herein had filed for rectification of Order dated 17.01.2023 on 15.02.2023 which is within 30 days of the said Order. The Order dated 17.01.2023 was partly rectified vide Order dated 21.03.2023 and, excluding the period taken for obtaining the certified copy, the Appeal has been filed within 30 days of the said Order. The Order dated 17.01.2023 has merged with the Order dated 21.03.2023 due to partial rectification..."*

*Thus, considering the Order of the Hon'ble Supreme Court cited supra and provisions of sub-Rule (2) of Rule 22 of NCLAT Rules, 2016 and Section 12 of the Limitation Act, 1963, the period spent in obtaining certified copy of the Impugned Order is to be excluded while calculating the period of 30 days prescribed for filing Appeal under Section 61 of the IBC, 2016. Further, following the Order of this Tribunal cited supra, the Appellant cannot be faulted with for seeking rectification of the Order dated 17.01.2023 before filing the Appeal before this Tribunal. Considering the above facts, we hold that Appeal under Section 61 of the IBC, 2016, filed before this Tribunal is within time and the rectification Order dated 21.03.2023 merges with the original Order dated 17.01.2023, and proceed ahead for determination of issues in the present Appeal."*