

Learning Curve-1030

March 14, 2024

If 45th day for filing the Appeal u/s 61 of IBC is a Holiday and appeal is filed on the date when Court reopens, benefit of holiday cannot be extended to the Appellant.

CASE TITLE	State Bank of India Vs. Darwin Platform Infrastructure Ltd. & Ors.
CASE CITATION	Company Appeal (AT) (Insolvency) No. 1354 of 2023
DATE OF ORDER	February 13, 2024
COURT/ TRIBUNAL	NCLAT, New Delhi

BRIEF FACTS:

The order of AA was delivered on July 21, 2023 approving the Resolution Plan, and certified copy of the order was provided to the appellant on July 25, 2023. It is contended that period of 30 days of the limitation for filing the Appeal shall expired on August 24, 2023. Further 15 days time condonable as per Sec 61(2) proviso expires on September 07, 2023 and the Hon'ble Appellate Tribunal being closed from September 07 to 10, 2023, Appeal was e-filed on September 07, 2023 being a day when Tribunal was closed. Hence, the Appeal is within condonable period of 15 days and should be admitted.

DECISION:

The Hon'ble NCLAT, New Delhi held that,

"This tribunal considered and rejected the above submission and held that prescribed period of limitation being 30 days and not the 45 days..."

In view of the above discussion, we are of the view that the submission advanced by Ld. ASG that 07th September, 2023 being public holiday, appeal filed on 07th September, 2023 is within 45 day cannot be accepted. As observed above the Judgments of the Hon'ble Supreme Courts in Assam Urban Water Supply and Bhimashankar Sahakari Sakkare Karkhane Niyamita are fully attracted and we are bound by the Judgment of the Hon'ble Supreme Court and following the Judgment, we reject the submission of the Appellant that benefit of holiday on 07th September, 2023 should be extended to the Appellant and the Appeal has to be treated within time.

In view of the fore-going discussion and conclusion, we are of the view that the Appeal was filed beyond condonable period of 15 days. Our jurisdiction to condone the delay being limited to 15 days, we are unable to condone the delay in filing the Appeal. The Delay Condonation Application (I.A. No. 5067 of 2023) is dismissed."