

# INSTITUTE OF INSOLVENCY PROFESSIONALS

A wholly owned subsidiary of ICSI and registered with IBBI

Learning Curve-832

September 6, 2022

**Limitation period is to be counted from the date when the certified copy is prepared and not from the date of delivery of the certified copy.**

<b>CASE TITLE</b>	Wadhwa Rubber v Bandex Packaging Pvt. Ltd. <sup>1</sup>
<b>CASE CITATION</b>	Company Appeal (AT) (Ins.) No. 576 OF 2021
<b>SECTIONS/REGULATION</b>	Section 9 and Section 61 of the IBC
<b>DATE OF ORDER</b>	24.08.2022
<b>COURT/ TRIBUNAL</b>	NCLAT, New Delhi

## **Brief of the case:**

The application filed under Section 9 of the Code by the Appellant was dismissed on 08.01.2020. Appellant had applied for the certified copy of the order dated 08.01.2020 on 10.02.2021. The copy of the order was prepared on 17.02.2021. It was taken by the Appellant on 06.04.2021 and then the appeal is filed on 04.08.2021. Applicant submitted that the copy which is to be given free of cost was not supplied and therefore, the certified copy was applied on 10.02.2021 and when it was delivered, the appeal was filed which is within limitation.

## **Decision:**

Hon'ble NCLAT dismissed the appeal as being barred by limitation and held that,

*“The application filed under Section 9 of the Code by the Appellant was dismissed on 08.01.2020. It cannot be imagined that the factum of dismissal of the application was not within the knowledge of the Appellant who was represented by the Counsel. Despite that, the Appellant did not care to apply for the certified copy for over a year and has made a lame excuse that it was to be supplied free of cost. However, the certified copy appears to have been applied on 10.02.2021 and was prepared on 17.02.2021 but the Appellant spent almost two months even in taking the certified copy from the Tribunal.*

*It is well settled that the limitation is to be counted not from the date of delivery of the certified copy but from the date of preparation of the certified copy. In this case it was prepared on 17.02.2021 and if the limitation is to be counted from 17.02.2021 the same had expired much earlier than the date of filing of the appeal on 04.08.2021.*

*..Thus, looking from any angle, the appeal filed by the Appellant is without limitation provided under Section 61 of the Code of a period of 30 days and Section 61(2) proviso an additional period of 15 days for which discretion is granted to the Appellate Authority to condone only on being satisfied that there is a sufficient cause for condonation of delay..”*

**QR CODE FOR FULL ORDER/JUDGEMENT:**



<sup>1</sup>[https://efiling.nclat.gov.in/nclat/order\\_view.php?path=L05DTEFUX0RvY3VtZW50cy9DSVNfRG9jdW1lbnRzL2Nhc2Vkb2Mvb3JkZXJzL0RFTEhJLzlwMjltMDgtMjQvY291cnRzLzQvZGFpbHkvMTY2MTQyODkxMjMzE3MDU2NjMwNzY0YjA2YTc1ZC5wZGY=](https://efiling.nclat.gov.in/nclat/order_view.php?path=L05DTEFUX0RvY3VtZW50cy9DSVNfRG9jdW1lbnRzL2Nhc2Vkb2Mvb3JkZXJzL0RFTEhJLzlwMjltMDgtMjQvY291cnRzLzQvZGFpbHkvMTY2MTQyODkxMjMzE3MDU2NjMwNzY0YjA2YTc1ZC5wZGY=)