

INSOLVENCY

INSIGHT

Limitation Period to be counted from the date of the order and not date of
knowledge of the order

Plea of running account cannot be raised if there are no documentary evidence in
support thereof



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The Hon'ble NCLAT, New Delhi in the case of Deepak Dahyalal vs. Steel Resources and Anr. Company Appeal (AT) (Insolvency) No. 300 of 2024 has held that IBC by virtue of being a special statute, the Tribunal is not empowered to condone any delay beyond the statutory prescriptions in IBC containing a provision for limitation.

This is a case where the Adjudicating Authority had passed ex-parte order, the Appellant had no knowledge of the proceedings. The Appellant became aware of the proceedings only when the interim resolution professional informed them. A delay condonation application was filed seeking condonation delay of 41 days in filing the present appeal.

NCLAT while relying on Kalpraj Dharamshi vs. Kotak Investment Advisors Ltd (2021) 10 SCC 401 and V. Nagarajan vs. SKS Ispat and Power Ltd & ors in Civil Appeal No. 3327 of 2020 observed that the thumb-rule that any appeal is a creature of statute should be kept in consideration. It has been noticed that IBC being a special statute, for purposes of calculating the period of limitation to file an appeal, the governing section shall be Section 61 of the IBC.

The Bench observed that Section 61 of the IBC has to be interpreted keeping in mind the overall purpose and object of the IBC which inter-alia includes timely resolution of the CIRP. That being an avowed objective of this legislation and it being settled law that for purposes of calculating the period of limitation to file an appeal in any IBC proceeding, the governing Section shall be Section 61 of the IBC.

Plea of running account cannot be raised if there are no documentary evidence in support thereof

The Hon'ble NCLAT, New Delhi in the case of M/s Murphy Steel v. M/s Gujarat Wedge Wire Screens Limited, Company Appeal (AT) Insolvency No. 171/2024 upheld the NCLT's order wherein claim of operational creditor was dismissed for barred by limitation.

This is a case where operational creditor set up a plea of running account to justify 26 invoices. All these invoices were of period between 2011 to 2016 whereas section 9 petition was filed in September 2020.

The Learned NCLT dismissed the petition being time barred. The Hon'ble NCLAT upheld the findings of Learned NCLT and held that there is no document/agreement between the two parties which evidences running account payment underlying their business operations. In the absence of any documentary evidence which provides foundational basis to the claim that there was a running account, the decision in Shri Abhinandan Jain v. Tanaya Enterprises Pvt. Ltd. in Company Appeal (AT) (Ins.) No. 1017 of 2020 is of no relevance.



D106 SF Defence Colony
New Delhi - 110024



asp@sinhapartners.com
www.sinhapartners.com



+91 11 41 046 911
+91 11 40 536 008