

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1862 of 2024 &
Interlocutory Application No.6846 of 2024

(Arising out of Order dated 31.07.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court-III in IA/928/2023 in C.P. (IB)/2941(MB)/C-III-2019)

IN THE MATTER OF:

BSE Ltd. ... Appellant

Versus

Mrudula Brodie & Ors. ... Respondents

Present:

For Appellant : Mr. Abhishek Puri, Ms. Surbhi Gupta, Mr. Sahil Grewal, Mr. Manish Chhangani, Advocates.

For Respondent : Mr. Naveen Hegde, Mr. Akshay Puri, Mr. Mayank Samuel, Advocates for R-1.

Mr. Sidharth Sehti, Mr. Kunal Saini, Advocates for R-3 (NSDL).

Mr. Neeraj Malhotra, Sr. Advocate with Mr. Mohit Kumar, Bafna, Mr. Abhishek Baid, Mr. Praneet Das, Mr. Nimish Kumar, Advocates for R-5 (SEBI).

With

Company Appeal (AT) (Insolvency) No. 1883 of 2024 &
Interlocutory Application No.6950 of 2024

(Arising out of Order dated 31.07.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court-III in IA/928/2023 in C.P. (IB)/2941(MB)/C-III-2019)

IN THE MATTER OF:

National Stock Exchange of India Ltd. ... Appellant

Versus

Mrudula Brodie & Ors. ... Respondents

Present:

For Appellant : Mr. Abhijeet Sinha, Sr. Advocate with Mr. Aditya Shukla, Ms. Heena Kochar, Ms. Krushi Barfiwala,

Ms. Rima Desai, Mr. Rudra Desosthali, Mr. Pranav Sarthi, Ms. Prachi Dhingra, Advocates.

For Respondent : Mr. Naveen Hegde, Mr. Akshay Puri, Mr. Mayank Samuel, Advocates for R-1.

Mr. Sidharth Sehti, Mr. Kunal Saini, Advocates for R-3 (NSDL).

Mr. Neeraj Malhotra, Sr. Advocate with Mr. Mohit Kumar, Bafna, Mr. Abhishek Baid, Mr. Praneet Das, Mr. Nimish Kumar, Advocates for R-5 (SEBI).

J U D G M E N T

ASHOK BHUSHAN, J.

These two Appeal(s) have been filed against the same order of the Adjudicating Authority dated 31.07.2024 passed by National Company Law Tribunal, Mumbai Bench, Court-III in IA/928/2023. By the order impugned, the Application filed by the Liquidator (Respondent No.1) has been allowed. Aggrieved by the aforesaid order both BSE Ltd. and National Stock Exchange of India Ltd. have filed these Appeal(s).

2. Both the Appeal(s) have been filed after the prescribed period of limitation of 30 days and application for condonation of delay being IA No.6846/2024 has been filed in Company Appeal (AT) (Insolvency) No. 1862 of 2024 and IA No.6950/2024 has been filed in Company Appeal (AT) (Insolvency) No. 1883 of 2024. We have heard learned Counsel for the parties on delay condonation application in both the Appeals.

3. Brief facts need to be noticed with respect to delay condonation application in the above Appeal(s) are as follows:

IA No.6846 of 2024

- (i) IA 6846 of 2024 prays for condonation of 18 days delay in filing of the Appeal.
- (ii) An application IA No.7409 of 2024 has been filed in IA No.6846 of 2024 seeking amendments in IA No.6846 of 2024. Amendments sought in the IA is to the effect that delay in filing the Appeal is only 14 days and paragraph 6 of IA No.6846 of 2024 was also sought to be amended to the effect that certified copy was applied on 07.08.2024 and the same was received on 08.08.2024. After paragraph 8, paragraph 8A be inserted to the following effect:

“However, since 14.09.2024 and 15.09.2024 were Saturday and Sunday respectively, and 16.09.2024 was a bank holiday, as per Rule 3 of the National Company Law Appellate Tribunal Rules, 2016 (“NCLAT Rules”) , the said 3 (three) days ought to be excluded in computation of the limitation for the purposes of the present appeal, which came to be filed on 17.09.2024, the next day after the registry of this Hon’ble Tribunal reopened. I crave leave to refer to and rely upon the additional material during the course of the hearing including the said NCLAT Rules”

IA No.7409 of 2024 praying for amendment in IA No.6846 of 2024 is allowed.

The facts of the IA No.6846 of 2024 as amended needs to be noted.

- (iii) The order impugned was passed on 31.07.2024. Certified copy was applied on 07.08.2024 and certified copy was received on

08.08.2024. The Appellant's case in the application is that the limitation of 30 days will expire on 30.08.2024. Thereafter 15 days period will expire on 16.09.2024, after excluding the period taken for obtaining certified copy and 15.09.2024 and 16.09.2024 being holidays in the Tribunal, the Appeal filed on 17.09.2024 is within the 15 days condonable period. It is further pleaded that the order having been passed on 31.07.2024, the said date needs to be excluded and period of 30 days shall commence from 01.08.2024 and after giving the benefit of two days in getting the certified copy, 30 days period will expire on 31.08.2024 (which is Saturday) and 01.09.2024 (which is Sunday), the said two days also need to be excluded and 30 days period has to be computed with effect from 02.09.2024 and Appeal filed on 17.09.2024 is within the 15 days condonable period.

IA No. 6950 of 2024

- (i) The order impugned is of 31.07.2024 and the Appeal has been filed on 17.09.2024. The application prays for condonation of delay of 18 days, praying that period shall be extended till 17.09.2024, 15.09.2024 and 16.09.2024 being holidays.

4. We have heard Shri Abhishek Puri, learned Counsel appearing for the Appellant in IA No.6846 of 2024 and Shri Abhijeet Sinha, learned Senior Counsel appearing for the Appellant in IA No.6950 of 2024; Shri Naveen Hegde, learned Counsel for Respondent No.1; Shri Neeraj Malhotra

learned Senior Counsel has appeared for SEBI; Shri Siddharth Sehti, learned Counsel has appeared for NSDL.

5. Shri Abhishek Puri, learned Counsel appearing for the BSE Ltd. submits that application for condonation of delay filed by the Appellant is within condonable period and the Appellant being an organization, which require requisite approval and deliberations, delay deserve to be condoned. It is submitted that certified copy having been applied on 07.08.2024 and received on 08.08.2024, two days period need to be excluded. It is further contended that 15.09.2024 and 16.09.2024 being holidays, the Appeal was filed with the delay of 14 days and the period of 15 days condonable period has expired on 15.09.2024, the Appeal filed on 17.09.2024 was within time since 15.09.2024 and 16.09.2024 being holidays need to be excluded. It is submitted that judgment of this Tribunal relied by Respondent in ***State Bank of India vs. Darwin Platform Infrastructure Ltd. & Ors. - IA No.5067 of 2023 in Company Appeal (AT) (Ins.) No.1354 of 2023*** is distinguishable since this Tribunal had not adverted to Rule 3 of NCLAT Rules, 2016. It is submitted that Section 4 of the Limitation Act, 1963 was not to be applied and by virtue of Rule 3, the period of 15 days, which is a condonable period, this Tribunal can condone the delay and the delay has also to be treated to be within period covered under Rule 3. Hence, 15.09.2024 and 16.09.2024 also need to be excluded and thus, the Appeal filed on 17.09.2024 has to be treated within the condonable period. It is further submitted that by excluding two days for obtaining certified copy,

30 days period will expire on 01.09.2024, both 31.08.2024 and 01.09.2024 being Saturday and Sunday, 15 days shall commence on 02.09.2024.

6. Shri Abhijeet Sinha, learned Senior Counsel appearing for the Appellant in Company Appeal (AT) (Ins.) No.1883 of 2024 also supports the submission of the Appellant in BSEL Ltd. and submits that Rule 3 of NCLAT Rules, 2016, which is applicable in the present case, has not been adverted to by this tribunal in **Darwin Platform's** case, which need to be applied and the period of 15 days having fallen on holiday, the Appeal could have been filed only on re-opening. Shri Sinha submits that Appeal having been filed within 45 days from the date of the impugned order, this Tribunal has requisite jurisdiction to condone the delay of 15 days in filing of the Appeal.

7. Learned Counsel appearing for the Liquidator refuting the submission of the Appellant(s) submits that insofar as giving the benefit of holidays falling between the period of 15 days of the condonable period, the issue is covered by the judgment of this Tribunal in the matter of **State Bank of India vs. Darwin Platform Infrastructure Ltd. & Ors.** (supra), where this Tribunal has held that the benefit of Section 4 can be extended only with regard to period prescribed, i.e. for 30 days period. Hence, the claim of extending the benefit for 15th and 16th September, 2024 is not available. It is further submitted that Section 4 of the Limitation Act is also applicable by virtue of Section 238A of the IBC. It is submitted that Rule 3 has to be harmoniously construed and Rule 3, cannot be read to mean that when 15 days period is expiring and the Court is closed for holiday,

the said period need to be excluded. It is further submitted by learned Counsel for the Respondent that the period of limitation prescribed under Section 4 of the Limitation Act, cannot be excluded, even if 30 days period is expiring on holiday. What law provides is extension of the period for filing an Appeal, hence, for computation of 30 days period for limitation, there is no applicability of Section 4 of the Limitation Act. He submits that in the present case, 30 days period for filing the Appeal came to an end on 30.08.2024, hence, the fact that 31.08.2024 was Saturday and 01.09.2024 was Sunday, will not be available for any exclusion for filing an Appeal within a period of 30 days. Hence, both the Appeal(s) have been filed beyond condonable period and the application(s) praying for condonation of delay need to be rejected.

8. Learned Counsel appearing for the SEBI also supported the submission of the Appellant(s) and submitted that delay deserve to be condoned.

9. We have considered the submission of learned Counsel for the parties and have perused the record.

10. From the submissions of learned Counsel for the parties, the following are the questions, which need to be answered:

- (1) Whether, when the condonable period of 15 days, as prescribed under Section 61(2) of the proviso, is falling on a day, on which the Appellate Tribunal is closed, whether the

condonable period shall stand extended upto the date when Court re-opens?

- (2) Whether for computing the 30 days period for filing the Appeal under Section 61, the limitation of 30 days period expiring on a day on which Tribunal is closed for, the period shall be excluded upto the period on which Tribunal re-opens, for computation of 30 days period for filing of the Appeal.
- (3) Whether the delay in filing IA 6846 of 2024 in Company Appeal (AT) (Ins.) No.1862 of 2024 is within condonable period and sufficient cause has been made out to condone the delay.
- (4) Whether the delay in filing IA 6950 of 2024 in Company Appeal (AT) (Ins.) No.1883 of 2024 is within condonable period and sufficient cause has been made out to condone the delay.

Question No.1

11. Section 61, sub-section (2) provides for limitation for filing of the Appeal, is as follows:

“61(2) Every appeal under sub-section (1) shall be filed within thirty days before the National Company Law Appellate Tribunal:

Provided that the National Company Law Appellate Tribunal may allow an appeal to be filed after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing the appeal but such period shall not exceed fifteen days.”

12. Section 4 of the Limitation Act, 1963 provides as follows:

“4. Expiry of prescribed period when court is closed.—Where the prescribed period for any suit, appeal or application expires on a day

when the court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the court re-opens.

Explanation.—A court shall be deemed to be closed on any day within the meaning of this section if during any part of its normal working hours it remains closed on that day.”

13. Rule 3 of NCLAT Rules, 2016, on which much reliance has been placed by learned Counsel for the Appellant, provides as follows:

“3. Computation of time period.- Where a period is prescribed by the Act and these rules or under any other law or is fixed by the Appellate Tribunal for doing any act, in computing the time, the day from which the said period is to be reckoned shall be excluded, and if the last day expires on a day when the office of the Appellate Tribunal is closed, that day and any succeeding day on which the Appellate Tribunal remains closed shall also be excluded”

14. What is the prescribed period of limitation for filing an Appeal needs to be first considered.

15. Section 61, sub-section (2) clearly provides that prescribed period for limitation is 30 days for filing an Appeal under sub-section (1) of Section 61. The proviso, which empowers the National Company Law Appellate Tribunal to allow an Appeal after expiry of the said period of 30 days, if there is sufficient cause for not filing the Appeal, but such period shall not exceed 15 days, is the period, which cannot be held to be prescribed period. The proviso uses the expression “*after the expiry of the said period of thirty days*”, which clearly means that prescribed period for limitation is only 30 days. The submission of learned Counsel for the Appellant is that 15 days period, which is condonable period is also a period, on which Rule 3 shall

be applicable. Hence, if the 15 days period is falling on a day when Court is closed, the said benefit also needs to be extended. The submission advanced by learned Counsel for the Appellant is regarding interpretation of Rule 3. Rule 3 uses expression “*Where a period is prescribed by the Act and these rules or under any other law or is fixed by the Appellate Tribunal for doing any act*”. The prescribed period under the IBC under Section 61 is 30 days and the period of 15 days as provided under Section 61, sub-section (2) proviso, cannot be said to be prescribed period for filing an Appeal. The power to condone the delay upto 15 days, given by proviso of sub-section (2) of Section 61, cannot be held to be a period prescribed as referred to in the 1st sentence of Rule 3. The import of the Rule can further be deciphered from expression “*for doing any act*”. For doing any act, is referable to first part of the Rule 3, thus, where a period is prescribed by the Act and these rules or under any other law or is fixed by the Appellate Tribunal for doing any act. The expression ‘*for doing any act*’ is referable to expression ‘*fixed by the Appellate Tribunal for doing any act*’. The condonable period of 15 days provided under Section 61, sub-section (2) cannot be considered to be covered by expression “*for doing any act*”. The power to condone the delay of 15 days is the power vested in the Appellate Tribunal and there is no applicability of Rule 3 with regard to power of condonation vested in this Appellate tribunal for condonation of delay of 15 days. The submission of the Appellant that by virtue of Rule 3, in event 15th day is falling on a day, on which the Tribunal is closed, the said period also needs to be extended has to be rejected.

16. The above issue has been adequately considered and answered by this Tribunal in three Members' Bench judgment of this Tribunal in **State Bank of India vs. Darwin Platform Infrastructure Ltd. & Ors.** (supra). In the above case also the same question was considered. One of the issues framed in paragraph 12 (ii) is as follows:

“**12.ii.** Whether in event Appeal is filed on 15th day after expiry of the limitation and the day being holiday the appeal can be presented on the day when court reopens?”

17. The above question was considered after referring to provisions of the Limitation Act, provisions of the IBC and three judgments of the Hon'ble Supreme Court, which were relied before this Appellate Tribunal. This Tribunal referring to the judgment of the Hon'ble Supreme Court in **Assam Urban Water Supply and Sewerage Board vs. Subhash Projects and Marketing Ltd. – (2012) 2 SCC 624** clearly held that the period of one month under which the delay in filing the application should be condoned is not the period of limitation. It is useful to extract paragraphs 31, 32, 33, 34 and 35 of the judgment of this Tribunal in **State Bank of India vs. Darwin Platform Infrastructure Ltd. & Ors.**, which are as follows:

“**31.** Hon'ble Supreme Court in paragraph 10 held that three months' period for filing an application for setting aside the award came to an end on 26th November, 2003 and the extended period of one month under which the delay in filing the application should be condoned is not the period of limitation. It is relevant to notice paragraph 10 to 14 of the Judgment which is to the following effect:

“10. The facts in the present case are peculiar. The arbitral awards were received by the appellants on 26-8-2003. No application for setting aside the arbitral awards was made by the appellants before elapse of three months from the receipt thereof. As a matter of fact, three months from the date of the receipt of the arbitral award by the appellants expired on 26-

11-2003. The District Court had Christmas vacation for the period from 25-12-2003 to 1-1-2004. On reopening of the court i.e. on 2-1-2004, admittedly, the appellants made applications for setting aside those awards under Section 34 of the 1996 Act. If the period during which the District Court, Kamrup, Guwahati, remained closed during Christmas vacation, 2003 is extended and the appellants get the benefit of that period over and above the cap of thirty days as provided in Section 34(3), then the view of the High Court and the District Judge cannot be sustained. But this would depend on the applicability of Section 4 of the 1963 Act.

11. The question, therefore, that falls for our determination is whether the appellants are entitled to extension of time under Section 4 of the 1963 Act in the above facts?

12. Section 4 of the 1963 Act reads as under:

“4.Expiry of prescribed period when court is closed.—Where the prescribed period for any suit, appeal or application expires on a day when the court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the court reopens.

Explanation.—A court shall be deemed to be closed on any day within the meaning of this section if during any part of its normal working hours it remains closed on that day.”

The above section enables a party to institute a suit, prefer an appeal or make an application on the day the court reopens where the prescribed period for any suit, appeal or application expires on the day when the court is closed.

13. The crucial words in Section 4 of the 1963 Act are “prescribed period”. What is the meaning of these words?

14. Section 2(j) of the 1963 Act defines:

“2.(j) ‘period of limitation’ [which] means the period of limitation prescribed for any suit, appeal or application by the Schedule, and ‘prescribed period’ means the period of limitation computed in accordance with the provisions of this Act;”

Section 2(j) of the 1963 Act when read in the context of Section 34(3) of the 1996 Act, it becomes amply clear that the prescribed period for making an application for setting aside an arbitral award is three months. The period of 30 days mentioned in the proviso that follows sub-section (3) of Section 34 of the 1996 Act is not the “period of limitation” and, therefore, not the “prescribed period” for the purposes of making the application for setting aside the arbitral award. The period of 30 days beyond three months which the court may extend on sufficient cause being shown under the proviso appended to sub-section (3) of Section 34 of the 1996 Act being not the “period of limitation” or, in other words, the “prescribed period”, in our opinion, Section 4 of the 1963 Act is not, at all, attracted to the facts of the present case.”

32. The ratio of the above judgment is categorical that the period of 30 days which the Court may extend on sufficient cause is not the period of limitation hence the benefit of Section 4 is applicable only with regard to period of limitation prescribed for filing an application.

33. Learned Counsel for the Respondent has also placed reliance on recent Judgment of Hon'ble Supreme Court in **"Bhimashankar Sahakari Sakkare Karkhane Niyamita"** (supra) where Hon'ble Supreme Court has occasion to consider both the Judgment i.e. **Assam Urban Water Supply and Sridevi Datla**. In **"Bhimashankar Sahakari Sakkare Karkhane Niyamita"** case also the Hon'ble Supreme Court considered Section 34(3) of the Arbitration and Conciliation Act, Section 2(j) and Section 4 of the Limitation Act. In the facts of the said case, award was passed on 24th August, 2016 and period of 90 days expired on 24th November, 2016, Court was closed for Christmas Vacation from 19.12.2016 to 01.01.2017 and the Application under Section 34 was filed on 02nd January, 2017. The facts of the case have been noticed in paragraph 3 and 4 of the Judgment which are as follows:

"3. That, an arbitral award was passed against the appellant under the provisions of the Arbitration Act on 24-8-2016. As per Section 34(3) of the Arbitration Act, 90 days are prescribed for preferring an application under Section 34 of the Arbitration Act against the arbitral award. However, the said period was extendable by a further period of 30 days in terms of the proviso to Section 34(3) of the Act, 2016. In the present case, the period of 90 days prescribed under Section 34(3) of the Arbitration Act expired on 24-11-2016. The appellant was entitled to a further extended period of 30 days from 23-11-2016 onwards in terms of the proviso to Section 34(3) which was up to 24-12-2016.

4. The trial courts were closed on account of winter/Christmas vacations from 19-12-2016 to 1-1-2017. However, it so happened that extendable/condonable period of 30 days as contemplated in the proviso to Section 34(3) expired on 24-12-2016 on which day the trial court was closed on account of winter/Christmas vacation. The appellant herein filed the application under Section 34 of the Arbitration Act, challenging the award passed by the Arbitral Tribunal. The appellant also filed IA No. 1 for condonation of delay. Both, Section 34 application as well as the application for condonation of delay were filed on the reopening day i.e. on 2-1-2017. As the application under Section 34 of the Arbitration Act was beyond the prescribed period of provided under Section 34 of the Arbitration Act as well as beyond the condonable period of 30 days, the learned trial court dismissed IA No. 1 and refused to condone the delay by observing that the period beyond 120 days is not condonable as under the Arbitration Act, maximum period provided for preferring an application under Section 34 is 120 days."

34. The submission was pressed before the Hon'ble Supreme Court that Appeal having been filed within 30 days condonable period as contemplated in proviso of Section 34(3) and the said period expired on day when court was closed for Summer Vacation Appeal could have been filed on the reopening day i.e. 02.01.2017. The said submission was not accepted. The question which came for consideration was noticed by Hon'ble Supreme Court in paragraph 31 of the Judgment which is as follows:

“31. It is submitted that therefore the following questions arise for consideration in the present case:

31.1. Whether the benefit of Section 4 of the Limitation Act, 1963 is available to a party when the “prescribed period” of 3 months for filing a petition under Section 34(3) of the Arbitration Act has already expired and the discretionary period of 30 days under the proviso to Section 34(3) falls on a day when the Court is closed?

31.2. Whether the benefit of Section 10 of the General Clauses Act, 1897 is separately available to a party in such circumstances?”

35. In paragraph 46 to 50, Hon'ble Supreme Court laid down following:

“46. Therefore, the central question in the present appeal is whether when the last day of condonable period of 30 days [under Section 34(3) of the Arbitration Act] falls on a holiday or during the court vacation, would the benefit of Section 10 of the General Clauses Act, 1897 be available?

47. While considering the aforesaid issues/questions, Section 34 of the Arbitration Act is required to be referred to, which reads as under:

“34. Application for setting aside arbitral award.—(1)-(2)

.....

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under Section 33, from the date on which that request had been disposed of by the Arbitral Tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.”

48. The relevant provisions of the Limitation Act and the General Clauses Act, 1897 are also required to be referred to which are as under:

“2. (j) “period of limitation” [which] means the period of limitation prescribed for any suit, appeal or application by the Schedule, and “prescribed period” means the period of

limitation computed in accordance with the provisions of this Act;

4. Expiry of prescribed period when court is closed.—Where the prescribed period for any suit, appeal or application expires on a day when the court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the court reopens.

Explanation.—A court shall be deemed to be closed on any day within the meaning of this section if during any part of its normal working hours it remains closed on that day.”

49. Section 10 of the General Clauses Act, 1897:

“10. Computation of time.—(1) Where, by any [Subs. for “Act of the G.G. in C.” by the A.O. 1937.] [Central Act] or Regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open:

Provided that nothing in this section shall apply to any act or proceeding to which the Limitation Act, 1877, [See now the Limitation Act, 1963 (36 of 1963).] applies.

(2) This section applies also to all [Subs. for “Acts of the G.G. in C” by the A.O. 1937.] [Central Acts] and Regulations made on or after the fourteenth day of January, 1887.”

50. Section 34(3) of the Arbitration Act and Sections 2(j) and 4 of the Limitation Act, 1963 fell for consideration before this Court in Assam Urban [Assam Urban Water Supply & Sewerage Board v. Subash Projects & Mktg. Ltd., (2012) 2 SCC 624 : (2012) 1 SCC (Civ) 831] . Even the very issue raised in the present appeal fell for consideration before this Court in Assam Urban [Assam Urban Water Supply & Sewerage Board v. Subash Projects & Mktg. Ltd., (2012) 2 SCC 624 : (2012) 1 SCC (Civ) 831] . In the aforesaid decision, this Court interpreted the aforesaid provisions and has specifically observed and held that the benefit of exclusion of period during which Court is closed is available only when application for setting aside the award is filed within “prescribed period of limitation” and it is not available in respect of period extendable by the Court in exercise of its discretion.”

18. This Tribunal also held that provisions of Limitation Act are applicable to the IBC. Hence, there was no applicability of General Clauses Act. In paragraphs 36, 37, 38 and 39, following was held:

“36. Hon’ble Supreme Court referred to and relied on its judgments in Assam Urban Water Supply and held that the question is fully covered by Judgment of Hon’ble Supreme Court in Assam Urban Water Supply. Hon’ble Supreme Court further held that provisions of Limitation Act shall be applicable on the Arbitration and Conciliation Act and Section 10 of the General Clauses Act shall not be applicable by virtue of Section 10(1). In paragraph 57 to 58, following has been laid down:

“57. Now, so far as reliance placed upon Section 10 of the General Clauses Act, 1897 on behalf of the appellant is concerned, at the outset it is required to be noted that such a contention is untenable in light of the proviso to Section 10 of the General Clauses Act, 1897, which specifically excludes the application of Section 10 of the General Clauses Act, 1897 to any act or proceeding to which the Limitation Act, 1877 applies. Reference to the 1877 Act will now have to be read as reference to the Limitation Act, 1963 in view of Section 8 of the General Clauses Act, 1897.

58. Therefore, in light of the application of the Limitation Act, 1963 to the proceedings under the Arbitration Act and when Section 10 of the General Clauses Act, 1897 specifically excludes the applicability of Section 10 to any act or proceeding to which Limitation Act, 1963 applies and in light of the definition of “period of limitation” as defined under Section 2(j) read with Section 4 of the Limitation Act and as observed and held by this Court in Assam Urban [Assam Urban Water Supply & Sewerage Board v. Subash Projects & Mktg. Ltd., (2012) 2 SCC 624 : (2012) 1 SCC (Civ) 831] , benefit of exclusion of period during which the Court is closed shall be available when the application for setting aside award is filed within “prescribed period of limitation” and shall not be available in respect of period extendable by Court in exercise of its discretion.”

37. It is relevant to notice that Judgment of Sridevi Datla was also noticed and considered. In paragraph 59, Hon’ble Supreme Court laid down following:

“59. Now, so far as the reliance placed upon the decision of this Court in Sridevi Datla v. Union of India [Sridevi Datla v. Union of India, (2021) 5 SCC 321] relied upon on behalf of the appellant is concerned, at the outset it is required to be noted that in the said decision, this Court has not noticed the decision in Assam Urban [Assam Urban Water Supply & Sewerage Board v. Subash Projects & Mktg. Ltd., (2012) 2 SCC 624 : (2012) 1 SCC (Civ) 831] and there is no discussion on distinction between “prescribed period” and the “discretionary condonable period”. On the other hand, the binding decision of this Court in Assam Urban [Assam Urban Water Supply & Sewerage Board v. Subash Projects & Mktg. Ltd., (2012) 2 SCC 624: (2012) 1 SCC (Civ) 831] is directly on point.”

38. We have already noticed that provisions of Limitation Act are applicable to the Insolvency and Bankruptcy Code, 2016 hence there is no applicability of Section 10 of the General Clauses Act which was relied on by Hon'ble Supreme Court in Sridevi Datla Case.

39. The ratio of the Judgments of the Hon'ble Supreme Court in Assam Urban Water Supply and Bhimashankar Sahakari Sakkare Karkhane Niyamita are fully applicable in the present case and relying on the said judgment we can safely hold that the extended period of 15 days as provided in Section 61(2) proviso of the Code is not the prescribed period for limitation and the benefit of Section 4 is attracted only when last date of the limitation falls on Holiday.”

19. Learned Counsel for the Appellant sought to distinguish the above judgment on the ground that Rule 3 of the NCLAT Rules has not been considered. Rule 3 of the NCLAT Rule is nothing, but contains the principle laid down in Section 4 of the Limitation Act. The submission of the Appellant that judgment of this Tribunal in **State Bank of India vs. Darwin Platform Infrastructure Ltd. & Ors.** has looked into only Section 4 of the Limitation Act, Section 238 of the IBC and has held that Limitation Act is applicable. There is no indication in provisions of the IBC that there is any exclusion of Section 4 to 14 of Limitation Act to the IBC. Thus, Rule 3 contains nothing but principles enumerated in Section 4 of the Limitation Act and as we have already noticed the provisions of Rule 3 of NCLAT Rules, 2016 and has held that the said Rule 3 also refers to the period of limitation and shall not cover 15 days period, which is a period condonable conferred by Section 61, sub-section (2).

20. Learned Counsel for the Appellant further contended that judgment in **State Bank of India vs. Darwin Platform Infrastructure Ltd. & Ors.** can be said to be an obiter since in view of the answer to Question No.i, there was no occasion to consider Question No.ii. The learned Counsel for

the Respondent has rightly contended that the judgment of **State Bank of India vs. Darwin Platform Infrastructure Ltd. & Ors.** contains both the ratio, i.e. ratio laid down while answering Question No.i and Question No.ii.

21. Learned Counsel for the Respondent has relied on judgment of the Hon'ble Supreme Court in **PASL Wind Solutions Pvt. Ltd. v. GE Power Conversion India Pvt. Ltd. – (2021) 7 SCC 1**, where Hon'ble Supreme Court has laid down that a judgment may contain more than one ratio. In paragraphs 54 and 55, following was laid down:

54. It is clear that there can be more than one ratio decidendi to a judgment. Thus, in *Jacobs v. London County Council* [*Jacobs v. London County Council*, 1950 AC 361 : (1950) 1 All ER 737 (HL)] , the House of Lords, after referring to some earlier decisions, held, as follows : (AC pp. 369-70 : All ER p. 741)

... however, this may be, there is, in my opinion, no justification for regarding as obiter dictum a reason given by a Judge for his decision, because he has given another reason also. If it were a proper test to ask whether the decision would have been the same apart from the proposition alleged to be obiter, then a case which ex facie decided two things would decide nothing. A good illustration will be found in *London Jewellers Ltd. v. Attenborough* [*London Jewellers Ltd. v. Attenborough*, (1934) 2 KB 206 (CA)] . In that case the determination of one of the issues depended on how far the Court of Appeal was bound by its previous decision in *Folkes v. R.* [*Folkes v. R.*, (1923) 1 KB 282 (CA)] , [in which] the court had given two grounds for its decision, the second of which [as stated by Greer, L.J., in *Attenborough case* [*London Jewellers Ltd. v. Attenborough*, (1934) 2 KB 206 (CA)]] was that : (KB p. 222)

“... where a man obtains possession with authority to sell, or to become the owner himself, and then sells, he cannot be treated as having obtained the goods by larceny by a trick.”

In *Attenborough case* [*London Jewellers Ltd. v. Attenborough*, (1934) 2 KB 206 (CA)] it was contended that, since there was another reason given for the decision in *Folkes case* [*Folkes v. R.*, (1923) 1 KB 282 (CA)] , the second reason was obiter, but Greer, L.J., said in reference to the argument of counsel : (*Attenborough case* [*London*

Jewellers Ltd. v. Attenborough, (1934) 2 KB 206 (CA)] , KB p. 222)

“I cannot help feeling that if we were unhampered by authority there is much to be said for this proposition which commended itself to Swift, J., and which commended itself to me in Folkes v. R. [Folkes v. R., (1923) 1 KB 282 (CA)] , but that view is not open to us in view of the decision of the Court of Appeal in Folkes v. R. [Folkes v. R., (1923) 1 KB 282 (CA)] In that case two reasons were given by all the members of the Court of Appeal for their decision and we are not entitled to pick out the first reason as the ratio decidendi and neglect the second, or to pick out the second reason as the ratio decidendi and neglect the first; we must take both as forming the ground of the judgment.”

So, also, in Cheater v. Cater [Cheater v. Cater, (1918) 1 KB 247 (CA)] Pickford, L.J., after citing a passage from the judgment of Mellish, L.J., in Erskine v. Adeane [Erskine v. Adeane, (1873) LR 8 Ch App 756] , said : (Cheater case [Cheater v. Cater, (1918) 1 KB 247 (CA)] , KB p. 252)

“... That is a distinct statement of the law and not a dictum. It is the second ground given by the Lord Justice for his judgment. If a Judge states two grounds for his judgment and bases his decision upon both, neither of those grounds is a dictum.”

The said judgment has been followed in State of Gujarat v. Manoharsinhji Pradyumansinhji Jadeja [State of Gujarat v. Manoharsinhji Pradyumansinhji Jadeja, (2013) 2 SCC 300 : (2013) 1 SCC (Civ) 1071] (at paras 78 and 79) and in Shayara Bano v. Union of India [Shayara Bano v. Union of India, (2017) 9 SCC 1 : (2017) 4 SCC (Civ) 277] (at footnote 65).

55. Obviously, there were two reasons for discarding the appellant's argument in Atlas [Atlas Export Industries v. Kotak & Co., (1999) 7 SCC 61] — the first reason was clearly on merits. The second reason undoubtedly refused to entertain this plea as it had not been raised earlier. However, this was coupled with the fact that the parties participated in the arbitral proceedings and suffered an award, after which such plea was then taken. We are, therefore, unable to accede to the contention of Mr Himani that this case cannot be regarded as an authority for the proposition that Sections 23 and 28 of the Contract Act are out of harm's way when it comes to enforcing a foreign award under the Foreign Awards Act, 1961, where both parties are Indian companies.”

22. We, thus, are of the view that judgment of this Tribunal in in **State Bank of India vs. Darwin Platform Infrastructure Ltd. & Ors.** (supra) cannot be said to be an obiter with regard to Question No.ii, which Question

No.ii was specifically considered and decided. Hence, the ratio laid down by this Tribunal in **State Bank of India vs. Darwin Platform Infrastructure Ltd. & Ors.**, is a ratio, with which we are bound and have to follow. We, thus, are of the view that Question No.1 need to be answered holding that 15 days condonable period, even if it is coming to an end on a day, when the Tribunal is closed, the benefit of Rule 3 or Section 4 of the Limitation Act cannot be extended.

Question No.2

23. The submission which has been pressed by learned Counsel for the Respondent is that for computation of 30 days period of limitation there shall be no exclusion, in event the 30th day is expiring on a day when office of the Tribunal is closed. He submits that even Section 4 does not provide for computation of limitation. Section 4 of the Limitation Act has nothing to do with the computation of prescribed period and does not act as exclusion. Whereas, learned Counsel for the Appellant has relied on judgment of this Tribunal in **Raj Kumar Banerjee vs. Supriyo Kumar Chaudhuri – (2022) SCC OnLine NCLAT 1592** as well as Rule 3 of NCLAT Rules, 2016 and submits that by virtue of Rule 3, when 30th day is falling on a day when office of NCLAT is closed, the said day need to be excluded. The learned Counsel for the Respondent also in support of his submission has relied on judgment of Privy Council in **Maqbul Ahmad vs. Onkar Pratap Narain Singh – (1935) 41 LW 629; Amar Chand Inani vs. Union of India – (1973) 1 SCC 115** and judgment of the Delhi High Court in **Uttam Sucrotech vs. Union of India – (2011) SCC OnLine Del 85**.

24. We have extracted the provision of Section 4 of the Limitation Act, which contains heading “*Expiry of prescribed period when court is closed*”. The provision provides that where the prescribed period for any suit or appeal or application expires on a day when the court is closed, the suit, appeal or application may be instituted, preferred or made on the date when the court re-opens. Rule 3 of the NCLAT Rules specifically provides that in computing the time, the day from which the said period is to be reckoned shall be excluded, and if the last day expires on a day when the office of the Appellate Tribunal is closed, that day and any succeeding day on which the Appellate Tribunal remains closed shall also be excluded. When we read Rule 3 of the NCLAT Rules, it clearly provides that when the last date expires on a day when the office of the Appellate Tribunal is closed, that day and any succeeding day on which the Appellate Tribunal remains closed shall also be excluded. The submission raised by the learned Counsel for the Respondent that when the last date of limitation, i.e. 30th day in the present case falls on a day when the Appellate Tribunal is closed, that cannot be excluded, is clearly contrary to the express provision of Rule 3. In the facts of the present case, the order was passed on 31.07.2024 and by giving benefit of two days for certified copy, 30th day when limitation was expiring shall be 01.09.2024. 31st August, 2024 and 1st September, 2024 being Saturday and Sunday, the Appeal could have been filed on 02.09.2024, which was the day when the Appellate Tribunal was to re-open. The judgment of ***Raj Kumar Banerjee vs. Supriyo Kumar Chaudhuri – (2022) SCC OnLine NCLAT 1592*** was relied by the

Appellant, which was a case where 30 days' period expired on Saturday and Sunday, when the Court was closed. In paragraph 7, this Tribunal has noted Section 4 of the Limitation Act and Rule 3 of the NCLAT Rules and in paragraphs 7 to 10, held following:

“7. Law is well settled that the period of limitation commences from the date when the Order is pronounced by the Tribunal. In this context, reference is made to the Judgement of Hon'ble Supreme Court in the matter of **“V. Nagarajan Vs. SKS Ispat and Power Limited & Ors.” [(2022) 2 SCC 244]**. We thus have to first find out that when 30 days period of limitation which is the last date for filing the Appeal, expires. Order having been passed on 07th April, 2022, 30 days period is to expire on 07th May, 2022. 07th and 08th May, 2022 are the dates being Saturday and Sunday and on these days, the Court was closed hence last date for filing the Appeal was 09th May, 2022 as 07th and 08th May, 2022 were holidays.

8. Section 4 of the Limitation Act, 1963 as well as Rule 3 of the NCLAT Rules, 2016 provide that when the Court is closed, the Appeal can be filed when court reopens. Section 4 of the Limitation Act is as follows:

“4. Expiry of prescribed period when Court is closed. – Where the prescribed period for any suit, appeal or application expires on a day when the Court is closed, the suit, appeal, or application may be instituted, preferred or made on the date when the Court re-opens.

Explanation.- A Court shall be deemed to be closed on any day within the meaning of this section if during any part of its normal working hours it remains closed on that day.”

9. Rule 3 of the NCLAT Rules, 2016 is as follows:

“3. Computation of time period.- Where a period is prescribed by the Act and these rules or under any other law or is fixed by the Appellate Tribunal for doing any act, in computing the

time, the day from which the said period is to be reckoned shall be excluded, and if the last day expires on a day when the office of the Appellate Tribunal is closed, that day and any succeeding day on which the Appellate Tribunal remains closed shall also be excluded”

10. 09th May, 2022 being the last day when 30 days period of limitation came to an end and the Appeal having been e-filed on 23rd May, 2022 whether the delay is 15 days or more, is question to be answered. 09th May, 2022 being the last date of limitation, 10th May, 2022 will be the first day from which date 15th Days period has to be reckoned. 15th Day from 10th May, 2022 will be 24th May, 2022, the Appeal being e-filed on 23rd May, 2022, the delay has to be treated to be filed within the period of 15 days from the expiry of the Limitation.”

25. The above judgment fully supports the submission of the Appellant that when 30 days period was expiring on 7th May and 8th May being holiday, the last date for filing the Appeal would be 9th May, 2022. In the present case, applying the said analogy, 01.09.2024 being the last day and 31st August, 2024 and 1st September, 2024 being Saturday and Sunday, the Appeal could have been filed by 02.09.2024. The aforesaid two days, i.e. 31st August, 2024 and 1st September, 2024 has to be excluded by virtue of Rule 3.

26. Now we come to the judgments, which have been relied by learned Counsel for the Respondent. First judgment relied is judgment of Privy Council in ***Maqbul Ahmad vs. Onkar Pratap Narain Singh – (1935) 41 LW 629***, the above was a case where one of the objections, which was sought to be raised with regard to limitation in execution proceeding, was the period during which the Court was closed for vacation. When we look

into the above judgment, it is clear that the Privy Council held that the time expired on 25th July, 1923, which day did not fall in the long vacation, thus as a matter of fact, the case was distinguishable on facts. It is useful to extract following discussion in the judgment of the Privy Council:

“18. The second period is the period of the long vacation. In regard to that matter, the appellants seem to their Lordships to be in a position which is in the nature of a dilemma. It is to be noted that there is a marked distinction in form between Section 4 and Section 14. The language employed in Section 4 indicates that it has nothing to do with computing the prescribed period. What the section provides is that, where the period prescribed expires on a day when the Court is closed, notwithstanding that fact, the application may be made on the day that the Court reopens; so that there is nothing in the section which alters the length of the prescribed period : whereas in Section 14, and other sections of a similar nature in the Act, the direction begins with the words : "In computing the period of limitation prescribed for any application", certain periods shall be excluded. It, therefore, seems to their Lordships that, where there is ground for excluding certain periods under Section 14, in order to ascertain what is the date of the expiration of the prescribed period, the days excluded from operating by way of limitation have to be added to what is primarily the prescribed period ; that is to say, if the prescribed period is three years, and twenty days ought to be excluded in order to determine when the prescribed period expires, twenty days have to be added to the three years, and the date of the expiration of the prescribed period is thus ascertained.

19. That being so, the appellants appear to be in this difficulty. They have been allowed, and (as their Lordships think) properly allowed, the period from June 20, 1923, to August 6, 1923. At page 33 of the record, this passage in the judgment of the High Court appears :

"Even, therefore, if the three years and forty-eight days are counted from that date, the time expired some time about July 25, 1923. That did not fall within the long vacation. It therefore follows that the plaintiffs are not entitled to the benefit of Section 4."

20. That view of the way to calculate the prescribed period seems to their Lordships to be correct; but, even if it were not correct and it were necessary to turn to Section 4, the language of Section 4 is such that it seems to their Lordships to be impossible to apply it to a case like the present. What it provides is that, where the period of limitation prescribed expires on a day when the Court is closed, the application may be made on the day when the Court reopens. In their Lordships' view that means the proper Court in which the application ought to have been made, and on that view of it, it is impossible to say that this application was made to the proper Court on the day on which that Court reopened. Therefore, on either view of the case, the appellants necessarily fail in regard to that period."

27. More so, in the above case, Privy Council's has contrasted the provision of Section 4 with Section 14 and stated that Section 14 deals with computation period of limitation, whereas Section 4 has nothing to do with computation of the prescribed period. Be that as it may, in view of the specific Rule 3, which provides for exclusion of period during which the Court was closed on the last day of limitation and that days have to be excluded. The above judgment does not support the submission of the Respondent in the present case.

28. The judgment of the Hon'ble Supreme Court relied by learned Counsel for the Respondent is ***Amar Chand Inani vs. Union of India*** –

(1973) 1 SCC 115. Reliance has been placed on paragraph 8, where following was laid down:

“8. It was contended for the appellant that even if the Karnal Court was not the proper Court in which the suit should have been filed, the plaintiff was entitled to the benefit of Section 4 of the Act. Section 4 of the Act provides that where the period of limitation prescribed for any suit expires on a day when the Court is closed, the suit may be instituted on the day the court reopens. But, if the Karnal Court was not the proper court in which the suit should have been filed, the plaintiff would not be entitled to the benefit of Section 4. The decision of the Privy Council in *Maqbul Ahmad v. Pratap Narain Singh* [62 IA 80] , is an authority for this proposition. In that case the Privy Council said:

“...the language of Section 4 is such that it seems to Their Lordships to be impossible to apply it to a case like the present. What it provides is that, where the period of limitation prescribed expires on a day when the court is closed, the application may be made on the day when the Court reopens. In Their Lordship's view that means the proper Court in which the application ought to have been made....”

29. In the above case, the question was for extending the benefit of Section 4 of the Limitation Act. The Court held that the presentation of the suit was not in the Court, hence on the said ground, the benefit of Section 4 was not acceptable. It is useful to extract paragraph 9 of the judgment, which is as follows:

“9. If the plaintiff had filed the suit in the trial court, on March 2, 1950, then certainly the suit would have been within time under Section 4, as that was the proper Court in which the suit

should have been filed. As the Karnal Court had no jurisdiction to entertain the plaint, it was not the proper Court. The fact that the plaintiff would be entitled to take advantage of the Provisions of Section 14 of the Act would not, in any way, affect the question whether the suit was filed within the time as provided in Section 4 in the Karnal Court. Section 14 of the Act only provided for the exclusion of the time during which the plaintiff has been prosecuting with due diligence another civil proceeding against the defendant, where the proceeding is founded upon the same cause of action and is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it. Even if the plaintiff was entitled to get an exclusion of the time during which he was prosecuting the suit in the Karnal and Panipat Courts, the suit would not be within time as the filing of the suit in the Karnal Court was beyond the period of Limitation. It was, however, argued by Counsel for the appellant that the suit instituted in the trial court by the presentation of the plaint after it was returned for presentation to the proper Court was a continuation of the suit filed in the Karnal Court and, therefore, the suit filed in Karnal Court must be deemed to have been filed in the trial court; We think there is no substance in the argument, for, when the plaint was returned for presentation to the proper Court and was presented in that Court, the suit can be deemed to be instituted in the proper Court only when the plaint was presented in that Court. In other words, the suit instituted in the trial court by the presentation of the plaint returned by the Panipat Court was not a continuation of the suit filed in the Karnal Court (see the decisions in *Harachand Succaram Gandhi v. G.I.P. Rly. Co.* [AIR 1928 Bom 421] *Bimla Prasad Mukerji v. Lal Moni Devi* [AIR 1926 Cal 355] and *Ram Kishun v. Ashirbad.* [ILR 29 Pat 699] Therefore, the presentation of the plaint in the Karnal Court on March 2, 1959, cannot be deemed to be a presentation of it on that day in the trial court.”

30. The above two judgments, thus are clearly distinguishable and do not help the Respondent. Learned Counsel for the Respondent has placed much reliance on the judgment of Delhi High Court in ***Uttam Sucrotech vs. Union of India – (2011) SCC OnLine Del 85***. In the above case, an Appeal was preferred on 91st day, which was beyond condonable period. Hence, the application for condonation of delay was rejected, which order was also confirmed by the Appellate Authority. The said order came to be challenged before the Delhi High Court. Reliance has been placed on paragraphs 2 to 4, 8 and 24 of the judgment. In paragraphs 2 to 4, while noticing the facts of the case, the following was observed:

“2. The facts which are essential to be stated for adjudication of this petition are that the petitioner, a company incorporated under the Companies Act, 1956, is a merchant-exporter and engaged in the export of various engineering goods under rule 19 of the Central Excise Rules, 2002. It had executed bond with the respondents for exporting the goods by purchasing manufactured excisable goods duty-free on the basis of CT-1 issued from time to time by the respondents. It had submitted necessary documents on July 28, 2004 and October 19, 2004 which had been scrutinised by the respondents and thereafter show-cause notice No. 6 dated July 25, 2005 and show-cause notice No. 9 dated September 30, 2005 had been served on the petitioner-company. The petitioner explained all queries which were made in the aforesaid show-cause notices in its replies dated August 24, 2005 and October 4, 2005 and made a prayer to the respondents to drop the proceedings and to withdraw the show-cause notices.

3. As put forth, the adjudicator, namely, the Assistant Commissioner of Central Excise, dealt with the show-cause notices jointly and issued an order dated August 22, 2006

making a demand of Rs. 3,29,819 in terms of the provisions of section 11AC of the Act.

4. The aforesaid composite order passed on August 22, 2006 was received by the petitioner on August 29, 2006 against which the petitioner preferred an appeal on November 28, 2006. The second respondent by order dated June 8, 2007 came to hold that the appeal had been preferred on the 91st day, one day beyond the condonable period of limitation and, accordingly, rejected the application for condonation of delay which was filed along with the memorandum of appeal.”

31. Paragraph 8 notices the submission of the Appellant, which is to the following effect:

“8. It is submitted by Mr. Gupta, learned counsel for the petitioner that the petitioner received the order passed by the adjudicating officer on August 29, 2006 and the right to prefer an appeal under section 35 of the Act was in subsistence for a period of 60 days and the said period expired only on October 28, 2006 which was a Saturday and, therefore, he was entitled to have the benefit of 28th and 29th October, 2006 being Saturday and Sunday and, therefore, the Commissioner of Appeals has erred in computing the period of limitation. To put it differently, it is urged by Mr. Gupta that the period has to be computed from the date the right to prefer an appeal had accrued but the Commissioner computed the said period fallaciously and expressed the view that the appeal was preferred on the 91st day and, therefore, he had no authority to condone the delay. To bolster his submissions he has placed reliance on the decisions rendered in *Manohar Joshi v. Nitin Bhaurao Patil* (1996) 1 SCC 169, *Ramakant Mayekar v. Celine D’ Silva* (1996) 1 SCC 399 and *Jindal Steel and Power Ltd. v. Ashoka Alloy Steel Ltd.* (2006) 9 SCC 340.”

32. Paragraph 24 of the judgment, notices the finding of the High Court. What High Court has held in the above judgment is that if the period of the last day of filing of an appeal comes in the midst of a vacation or a holiday, the said period would not get excluded but is extended by the applicability of Section 4 of the Limitation or Section 10 of the General Clauses Act. The findings which have been recorded by the High Court in paragraph 24 are as follows:

“24. From the aforesaid pronouncement of law, it is clear as crystal that section 4 of the Limitation Act, 1963 and section 10 of the General Clauses Act, 1897 enable a person to do what he could not have done on a holiday on the next working day. If the last day for filing an appeal expires on a holiday when the court is closed and the memorandum of appeal cannot be presented, it is obligatory on the part of the appellant to present the same on the day when the court reopens. It is also evincible that where section 4 of the Limitation Act is not applicable, section 10 of the General Clauses Act comes into aid by extending the period to the next day of reopening of the court. It is also demonstrable that the said provisions do not entitle a person to add the days on which the court is closed to the statutory period. To put it differently, if the period of the last day of filing of an appeal comes in the midst of a vacation or a holiday, the said period would not get excluded but is extended by the applicability of section 4 of the Limitation Act or section 10 of the General Clauses Act which enables the affected party to prefer the appeal on the date when the court or the office reopens. The submission of Mr. Gupta, learned counsel for the petitioner is that as the limitation period of 60 days expired on October 28, 2006 which was a Saturday, the petitioner was entitled to the benefit of 28th and 29th October, 2006 being saturday and sunday and, thereafter, the further period of 30 days would commence and, therefore, the appeal was presented within the period of

limitation. The said proposition, in our considered opinion, runs counter to the principles which are culled out from the authorities we have referred to hereinbefore. We are disposed to think that the Commissioner as well as the revisional authority has correctly computed the period of limitation and appositely opined that the memorandum of appeal was presented on the 91st day and hence, the Commissioner could not have condoned the delay even if sufficient grounds have been shown beyond 30 days, i.e., 90 days in toto. Thus, the finding recorded on that score stands on terra firma.”

33. The High Court ultimately approved the finding of the Commissioner and Regional Authority that they have correctly computed the period of limitation and the Appeal was presented on 91st day, i.e. beyond condonable period. Hence, the said finding was affirmed. We have already noticed Rule 3 of the NCLAT rules, which provides for exclusion of the period, which falls on day when the office of the Appellate Tribunal is closed. Hence, exclusion of the period is specifically provided in the Rules. The judgment of the Delhi High Court, which had only considered Section 4 of the Limitation Act had no occasion to consider the rule 3 of the NCLAT Rules, 2016. Hence, by virtue of Rule 3 the said judgment of the High Court cannot be held to be applicable in the facts of the present case.

34. In view of the foregoing discussions, we are of the considered opinion that by virtue of Rule 3 of the NCLAT Rules, 2015, when last date for period of computation of limitation is falling on a day when office of the Tribunal is closed, the said period shall be excluded. Thus, in the present case, 30.08.2024, which was the 30th day for filing the Appeal and by giving two

days for certified copy, 30th day will be 01.09.2024 and 31st August 2024 and 1st September, 2024 being Saturday and Sunday both the days have to be excluded for computing the period of 30 days of limitation. Hence, the last day for filing of the Appeal shall be 01.09.2024 [in Company Appeal (AT) (Ins.) No.1862 of 2024].

35. We, thus, answer Question No.2 holding that for computing 30 days period for filing the Appeal under Section 61, if the office of the Tribunal is closed on the 30th day, the period shall extend upto the date on which the Tribunal re-opens.

Question No.3

Interlocutory Application No.6846 of 2024

36. Whether the application filed for condonation of delay is within the condonable period, is the first question to consider. The order was passed on 31.07.2024. The limitation shall commence from 01.08.2024 and 30 days would expire on 01.09.2024, by giving benefit of two days for certified copy. 31st August, 2024 being Saturday and 01.09.2024 being Sunday, 02.09.2024 will be the date on which limitation shall expire. We have further noticed that application for certified copy was submitted on 07.08.2024 and copy was delivered on 08.08.2024. Hence, two days are to be excluded while computing 30 days. By excluding two days, the 30 days period for filing the Appeal shall be expiring on 02.09.2024 and the Appeal having been filed on 17.09.2024, cannot be held to be beyond condonable period. The computation of 15 days shall commence from 02.09.2024 and

15th day will expire on 17.09.2024, on which date the Appeal was filed. Thus, the Appeal was filed within condonable period of 15 days. We have also held that 30 days period when expiring on a day when the Court is closed, the said period also be excluded while computing the period of limitation. Reasons have been given by the Appellant in the application for explaining the delay of 15 days in filing the Appeal. The Appellant is an organization, which require approval at the organization level for filing an Appeal, which grounds have been pleaded in the application. We, thus, are satisfied that there is sufficient ground given in the application, explaining the delay in filing the Appeal. We, thus, are satisfied that delay condonation application being IA No.6846 of 2024 being filed within condonable period and there being sufficient cause being shown for condonation of the delay, the delay condonation application deserves to be allowed and the Applicant has made out sufficient cause for condonation of the delay. The delay in filing the Appeal is accordingly condoned.

Question No.4

Interlocutory Application No.6950 of 2024

37. In the Company Appeal (AT) (Ins.) No.1883 of 2024, the same dates are there for computation of the period. Impugned order was passed on 31.07.2024 and the Appeal was e-filed on 17.09.2024. There is no material on record to indicate that certified copy was applied by the Appellant. The Appellant is, thus, not entitled for any exclusion on the ground of certified copy, which exclusion was available for the Applicant in Company Appeal

(AT) (Ins.) No.1862 of 2024. The 30 days period shall come to an end on 30.08.2024, the Appeal filed on 17.09.2024 was beyond condonable period. 30th August, 2024 was not a holiday, the Appeal having been filed on 17.09.2024, i.e. beyond 15 days condonable period, IA No.6950 of 2024 deserves to be rejected. In result IA No.6950 of 2024 is dismissed.

38. In view of the foregoing discussions, we allow IA No.6846 of 2024 filed in Company Appeal (AT) (Ins.) No.1862 of 2024. List Company Appeal (AT) (Ins.) No.1862 of 2024 'for admission' on **24th February, 2025**.

39. IA No.6950 of 2024 is rejected. Consequently the Memo of Appeal i.e. Company Appeal (AT) (Ins.) No.1883 of 2024 is rejected.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

NEW DELHI

21st February, 2025

Ashwani