

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**  
**Company Appeal(AT) (Insolvency) No. 685 of 2019**

[Arising out of a judgment dated 20.07.2018 passed NCLT Kolkata Bench, Kolkata in C.P.(IB) No. 512/KB/207]

**IN THE MATTER OF:**

|   | <b>In NCLT</b>    | <b>In NCLAT<br/>...Appellant</b>                  |
|---|-------------------|---|
| <b>Sita Ram</b><br>S/o Sh. Kanshi Ram,<br>Resident of vill- Haripur<br>Sandoli, P.O. Haripur sandoli<br>Tehsil Baddi,<br>District: Solan  |                   |   |
| <b>Vs</b>   |                   |   |
| <b>1. Mr. Samir Kumar Bhattacharya,<br/>(Resolution Professional)</b><br>C/o LSI Resolutions Private<br>Limited<br>104, S.P. Mukherjee Road, Sagar<br>Trade Cube, 5 <sup>th</sup> Floor,<br>Kolkata-700 026 |                   | <b>Respondent No. 1</b>                           |
| <b>2. Statsalit Limited</b><br>(Corporate Debtor)<br>Regd. Office: Shakespeare Court,<br>21 A, Shakespeare Sarani, 4 <sup>th</sup> Floor<br>Kolkata, West Bengal- 700 017                                   | <b>Respondent</b> | <b>Corporate<br/>Debtor/<br/>Respondent No. 2</b> |
| <b>3. Mr. Atul Mittal</b><br>(Chairman Monitoring Committee)<br>174, BALCO Apartements,<br>Plot 58, IP Extension Patparganj,<br>Delhi- 110 092  |                   | <b>Respondent No. 3</b>                           |
| <b>4. UCO Bank,</b><br>FCC-IEP Branch 2,<br>India Exchange Place,<br>Kolkata<br><br>Alternate Address:<br>Industrial finance Branch 3;<br>N.S. Road, Kolkata – 700 001                                      |                   | <b>Respondent No. 4</b>                           |
| <b>5. M/s River Rail JV</b><br>(Resolution Applicant)<br>712, 7 <sup>th</sup> Floor, Shakuntala Apart,<br>59, Nehru Place,<br>New Delhi -110 019  |                   | <b>Respondent No. 5</b>                           |

Alternate Address:  
C/o River Engineering Private Ltd.  
912, 9<sup>th</sup> Floor Devika Tower 6,  
Nehru Place  
New Delhi DL 110 019 IN

**6. Busilink Associates**

20, Netaji subas Road,  
Block A, First Floor  
Kolkata- 700 001

**Applicant**

**Operational  
Creditor/  
Respondent No. 6**

**....Respondents**

**Present:**

**For Appellant: Mr. M. Noman-Ul-Haq, Mr. Videh Vaish, Mr. Vahimuddin A. Khan, Mr. Aakash Bhardwaj and Mr. Sohail Ahmed, Advocates**

**For Respondents: Mr. Abhinav Vashishttha, Sr. Advocate along with Ms. Priya Chauhan and Mr. Vijay Kumar, Advocate for Respondent No. 1**

**Mr. Divyakant Lahoti and Ms. Praveena Bist Advocates for Respondent Nos. 3 & 5**

**ORDER**

**26.02.2020** Heard learned Counsel for the Appellant and learned Counsel for Respondent Nos. 1 & 3. A dispute has been raised by the Respondent that the appeal is not within limitation.

2. Learned Counsel for the Appellant is submitting that the Appellant had come to know about the Resolution Plan being accepted by the Impugned Order dated 20.07.2018 on 31.01.2019. Counsel states that the letter dated 23.01.2019 sent by Respondent No. 3 – Chairman Monitoring Committee, was received on 31.01.2019 and then the Appellant had applied for certified copy of the Impugned Order and received the same. The Counsel referred to contents in this regard in paragraph- 7.3 of the Memo of Appeal. Counsel further states that

on receiving certified copy, after coming to know on 31.01.2019, the Application for certified copy was filed on 21.02.2019 and the copy was received on 25.02.2019 and the Appeal was presented on 01.03.2019. Thus according to the learned Counsel the Appeal is within limitation.

3. Against this, the learned Counsel for the Respondents are pointing out that the Resolution Plan was approved on 20.07.2018 and it is already in the stage of implementation. It is stated that almost the whole of the plan has been implemented. Learned Counsel for the Respondents state that Respondent No. 3 had sent letter dated 10.12.2018 along with copy of Impugned Order to the Appellant on 21.12.2018- copy of the postal receipt is at page-49 of the Memo of Appeal. Learned Counsel for the Respondent No. 3 submits that efforts were made with the postal authority during pendency of the Appeal to get the tracking report but the Respondent No. 3 has been informed that the records have been weeded out.

4. Learned Counsel for the Appellant states that Appellant had also applied for the records and Postal Authority has informed the Appellant that as per manual record of Post Office, Haripur Sandoli BO that the said item of letter dated 10.12.2018 was returned to the sender on 28.12.2018.

5. Learned Counsel for the Respondents, however, further claim that the Appellant is suppressing the fact and has been negligent in filing the Appeal. It is stated that apart from sending letter dated 10.12.2018, there was a Public Notice issued in 'Dainik Tribune' in Hindi and 'The Statesman' in English regarding the Impugned Order passed. Learned Counsel states that although the

publication stated that the employees were being informed, still it was the information in public domain through newspapers and the Appellant cannot claim that he did not have knowledge. Learned Counsel for the Respondent is pointing out the Public Notice at pages 26 to 28 regarding the newspaper publications, in Reply Affidavit filed by Respondent No. 3 (Diary No. 18816). In addition, it is stated that Respondent No. 5, the Resolution Applicant, had also given public information of Resolution Plan being admitted in public domain by giving Public Notice on 08.12.2018 as can be seen at Annexure-R2, pages 27 and 28 of the Reply filed by Respondent No. 5 (Diary No. 28552). It is argued by the learned Counsel for the Respondents that the publications were made in newspapers having circulation in Kolkata and newspapers published from Chandigarh which, it is claimed, have circulation in the state of Himachal Pradesh.

6. Learned Counsel for the Appellant states that the Appellant had no knowledge and he is an illiterate residing in village Haripur Sandoli BO, District-Solar in Himachal Pradesh.

We find knowledge can be attributed to Appellant on 08.12.2018.

7. Apart from the newspaper publications, there is another reason why the claim of the Appellant that he got knowledge only on 31.01.2019 is suspect as the certified copy of the Impugned order, which has been filed, shows that the stamp paper for the purpose of certified copy, was purchased on 22.01.2019 and after purchasing the stamp paper on 22.01.2019, the Application was made for a certified copy only on 21.02. 2019.

8. Considering the documents on record, we do not find that the claim of Appellant can be accepted that he could know about the Impugned Order only on 31.01.2019.

9. Under Section 61 of IBC, the Appeal is required to be filed within 30 days which is the period of Appeal, and another 15 days can be condoned by this Tribunal if there is sufficient cause. However, in this matter, the Appeal filed against Impugned Order dated 20.07.2018, was time barred when it was presented on 01.03.2019. The conduct of the Appellant is further clear from the record which shows that after presenting the Appeal on 21.01.2019 when the Appellant was asked to cure the defects, it was re-filed after 116 days on 02.07.2019 and the Registry had to put up the matter for listing under the head “Admission with Defect” by order dated 04.07.2019.

10. Thus the appeal filed is barred by limitation.

For the above reasons, the Appeal is dismissed as time barred. No costs.

[Justice A.I.S. Cheema]  
Member (Judicial)

[Justice Anant Bijay Singh]  
Member (Judicial)

(Kanthi Narahari)  
Member(Technical)

*Akc/Md*