

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**I.A. No. 2596 of 2019**

**In**

**Company Appeal (AT) (Insolvency) No. 853 of 2019**

**IN THE MATTER OF:**

**Mr. Gursharan Singh**

Director and Shareholder

E-382, Second Floor,

Greater Kailash, Part-I,

New Delhi - 110008

**...Appellant**

**Versus**

**1. The State Trading Corporation of India Ltd.**

Registered Office at:

3<sup>rd</sup> Floor, Trade World,

'C' Wing, Kamala Mill,

Senapati Bapat Marg,

Lower Parel (West)

Mumbai - 400013

**...Respondent No 1/  
Operational Creditor**

**2. Spacevision Impex Pvt. Ltd.**

Through-Mr. Devinder Arora

(Interim Resolution Professional)

1203, Vijaya Building,

17, Barakhamba Road,

Connaught Place,

New Delhi - 110001

Email Id: [DEVINDER.RP@GMAIL.COM](mailto:DEVINDER.RP@GMAIL.COM),

Contact No. 9711405844

**...Respondent No. 2/  
Corporate Debtor.**

**Present:**

**For Appellant: Mr. Nikhil Nayyar, Sr. Advocate with  
Mr. Naveen Kr. Chaudhary and  
Mr. Divyanshu Rai, Advocates.**

**For Respondent: Dr. Maurya Vijay Chandra, R-1.  
Mr. Ashok Juneja, For RP, R-2.  
Ms. Sucheta Gupta (CS) For R-1.**

**J U D G M E N T**  
**(16<sup>th</sup> March, 2021)**

**A.I.S. Cheema, J.**

1. Respondent No. 1/Operational Creditor (The State Trading Corporation of India Limited) filed application under Section 9 of Insolvency and Bankruptcy Code, 2016 (IBC in short) having C.P. No. IB-697/ND/2018 before the Adjudicating Authority (National Company Law Tribunal, New Delhi, Court No. 4) and Application was admitted on 08<sup>th</sup> May, 2019 (Annexure A1-Page 90). Thus, the present Appeal has been filed and along with Appeal I.A. No. 2596 of 2019 is filed for Condonation of Delay.

2. Present Judgment is being passed disposing the I.A. No. 2596 of 2019 for Condonation of Delay.

3. The Appellant-Mr. Gurusharan Singh claims to be Director and Shareholder of the Corporate Debtor-M/s. Spacevision Impex Private Limited. The Appellant claims that the Impugned Order was passed ex-parte. According to him, in the first week of June, 2019, an envelope from Mr. Devinder Arora-Interim Resolution Profession (IRP in short) of Respondent No. 2 Corporate Debtor was received in the absence of the Appellant. It is claimed that the envelope was not opened and kept by wife of Appellant with other DAK. It is

claimed that the wife is house-wife and she did not open envelope addressed to the Appellant. Appellant claims that the Appellant came to know about the ex-parte order dated 08<sup>th</sup> May, 2019 only on 25<sup>th</sup> June, 2019 when he returned from his trip to Bangalore. It is claimed that the envelope did not contain the copy of the Order dated 08<sup>th</sup> May, 2019. Appellant claims and it has been argued that no free copy of the Order dated 08<sup>th</sup> May, 2019 was received by the Appellant or the Corporate Debtor. The Corporate Debtor had not done any business since 2010. The Learned Counsel for the Appellant has argued and the Application claims that the Appellant filed Application for inspection of records on 28<sup>th</sup> June, 2019 and the inspection was received on 05<sup>th</sup> July, 2019 and application for certified copy was filed on 08<sup>th</sup> July, 2019 which was received on 15<sup>th</sup> July, 2019. According to the Appellant then he had knowledge of the Impugned Order and after taking necessary steps, the Appeal was filed on 13<sup>th</sup> August, 2019. Thus, according to the Appellant, there is delay only of four days.

**4.** Respondent No. 1 to the Appeal (The State Trading Corporation of India Limited) has filed Reply-Affidavit vide Diary No. 19254 opposing the Application to condone the delay and in the Reply-Affidavit the averments made by the Appellant are denied. According to the Respondent No. 1, the Appellant has been regularly filing returns and has been showing address mentioned in the Ministry of Corporate Affairs Data Base as registered address and copy of Annual Return for 2017-2018 has been filed at Annexure A with the Reply-Affidavit. This Respondent claims that the averments and arguments made regarding not having knowledge till 25<sup>th</sup> June, 2019 is not acceptable. The Respondent No. 1 is claiming that the record of IRP shows that various efforts were made to serve

the Appellant and Corporate Debtor as well as the other Director and the Appeal is time-barred.

**5.** The IRP has filed Reply-Affidavit vide Diary No. 19273 and the Reply-Affidavit claims that the IRP had sent communication that Corporate Insolvency Resolution Process (CIRP in short) has been initiated against the Corporate Debtor. According to the IRP, he has sent another letter dated 30<sup>th</sup> May, 2019 requesting the Suspended Board of Director of the Corporate Debtor the Information/Documents/Books along with a copy of the Order dated 08<sup>th</sup> May, 2019. Copy of the said communication is at Annexure 1 Colly. The letter dated 30<sup>th</sup> May, 2019 addressed to the Corporate Debtor on registered address and the two Directors includes Appellant. The letter dated 30.05.2019 (at Reply page 9) shows that the letter was sent with copy of Impugned Order of National Company Law Tribunal (NCLT in short) Order dated 08<sup>th</sup> May, 2019 enclosed. There is copy of another letter at page 17 of the Reply. There reference is made to the IRP being appointed and Information/Documents/Books etc. being sought. The Reply of IRP shows that IRP also sent e-mail on the official e-mail as found on the web-site of Ministry of Corporate Affairs (MCA in short) copy of which is filed as Annexure 2 colly attaching orders of NCLT which e-mail is dated 30<sup>th</sup> May, 2019. The Reply further shows that the IRP visited the official address of the Company as found on the portal of MCA and had carried copy of the Order dated 08<sup>th</sup> May, 2019 but at the concerned place there was no office/place of business. He claimed that he took Phone Number from the care-taker and called Ms. Lata and sent Whatsapp Message to her. The IRP claims that the said Lady stated that the Appellant was out of country and that other Director Mr. Ravi Gupta

had gone to hill station. According to the IRP, the Lady assured to convey the message to Suspended Board of Directors regarding CIRP. Copy of the Screen Short has been attached at Annexure 3. There is yet another effort made by the IRP which shows that he sent a messenger with Letter dated 12.06.2019 copy of which is at Annexure 4. The IRP got endorsement on Annexure 4 of receipt which records that "Received on behalf of Mr. Ravi Gupta". There is signature, Mobile Numbers and date 13<sup>th</sup> June, 2019. Mr. Ravi Gupta appears to be other Director of the Corporate Debtor.

**6.** In the face of such documents being put on record by the IRP, who was acting in official capacity, we are not convinced with the bare statement made by the Appellant that he had gone to Bangalore and in his absence letter was received by his wife in the first of week (date is not mentioned) and that he got knowledge only on 25<sup>th</sup> June, 2019 when Corporate Debtor returned back. Such claims of want of knowledge can be made for convenience.

**7.** If on the address of the Appellant, the IRP had served letter (as seen at Page 241-252 of Volume II) dated 30<sup>th</sup> May, 2019 in the first week of June, 2019, the communication having been served on adult member of the family of the Appellant, service of the letter must be said to be complete on that date. The Appellant has chosen not to put on record exact date of receipt of letter dated 30<sup>th</sup> May, 2019 in the first week of June, 2019. For convenience, we may take the last day of the first week and treat that the letter was received on 07<sup>th</sup> June, 2019. If letter was received on 07<sup>th</sup> June, 2019, the Application for certified copy was filed only after consuming 30 days on 08<sup>th</sup> July, 2019. The certified copy was received on 15<sup>th</sup> July, 2019. After receiving the certified copy, the Appellant

consumed another 28 days and the Appeal was filed only on 13<sup>th</sup> August, 2019. This being so, the earlier consumed 30 days and subsequently consumed 28 days calculate to 58 days taken for filing of the Appeal. We are ignoring the averments made regarding the time consumed for taking inspection as that does not help in calculating limitation. This is so especially in the context of communications which IRP had already sent with regard to the Impugned Order dated 08<sup>th</sup> May, 2019. The IRP was acting in official capacity and with word against word and we would rely on the IRP (and the letter dated 30.05.2019) when he states that the communication dated 30<sup>th</sup> May, 2019 was sent along with copy of the Impugned Order dated 08<sup>th</sup> May, 2019.

**8.** The argument that free copy was not served on the Appellant is not relevant. IBC does not have provision to serve free copies. Even if one is to rely on Section 421 (3) of the Companies Act, 2013, there is Judgment in the matter of "*Sagufa Ahmad and Ors. Vs. Upper Assan Plywood Products Pvt. Ltd*". passed by the Hon'ble Supreme Court of India in Civil Appeal Nos. 3007-3008 of 2020 which would be relevant. If the Appellant did not rely on supply of free copy and applied for certified copy and filed Appeal based on certified copy then the Appellant cannot rely on Section 421 (3) of the Companies Act, 2013, to count limitation.

**9.** Under Section 61 of IBC, the Appeal has to be filed within 30 days. This Tribunal may allow an Appeal to be filed after the expiry of said Period of 30 days if it is satisfied that there was sufficient cause for not filing the Appeal in time but such period shall not exceed 15 days. Thus the Period of Appeal is 30 days and the Delay which this Tribunal can condone is only of 15 days over and above

the Period of Appeal. For reasons discussed above (See Paragraph 7), even if limitation was to be counted from 07<sup>th</sup> June, 2019 as mentioned above, the Appeal filed on 13.08.2019 must be said to be barred by limitation as it was not filed within 30 days plus 15 days of knowledge.

The Application to condone the delay is rejected. The Appeal being time-barred, the same is rejected.

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

**[Justice Anant Bijay Singh]**  
**Member (Judicial)**

**[Kanthi Narahari]**  
**Member (Technical)**

**New Delhi**  
Basant B.