

NATIONAL COMPANY LAW APPELLATE TRIBUNAL

PRINCIPAL BENCH

NEW DELHI

IA NO.5206 OF 2025

IN

COMPANY APPEAL (AT)(INS) NO.501/2023

In the matter of:

Advantagesai Projects Pvt Ltd

Appellant

Vs

Akshay Techforge Pvt Ltd

Respondent

For Appellant: Mr Anshuman Sahni, Mr Dhaval Deshpande, Mr Amir Arsiwale, Ms Neha Arya, Advocates for the Applicant.

For Respondent: Ms Pinky Anand, Sr Advocate, Ms Tanisha S, Ms Neejoleeka Purty, Advocates.

ORDER

HYBRID MODE

IA NO.5206/2025: This application is filed under Rule 11 of the NCLAT Rules 2016 *inter alia* seeking recall of the order and judgment dated 23.05.2025 passed by this Tribunal.

2. The appeal preferred by the appellant/respondent herein, admittedly was filed beyond the statutory period of 30 days, as prescribed under Section 61(2) of IBC and admittedly no application for condonation of delay was ever listed or allowed by this Tribunal. It is argued by the applicant in the absence of any order condoning the delay, this Tribunal lacked jurisdiction to entertain the appeal and the order dated 23.05.2025 passed by this Tribunal was *ex facie* without jurisdiction and *non-est* in law.

3. It is argued by the learned counsel for the applicant the respondent/appellant herein had failed to disclose the factum of limitation at the stage of issuance of notice, thereby misleading this Tribunal into entertaining a time barred appeal. Being aggrieved by the order dated 23.05.2025 of this Tribunal, the applicant had preferred a Civil Appeal No.9547/2025 before the Hon'ble Supreme Court of India but admittedly it was not pressed for and liberty to approach this tribunal was instead sought. The order dated 25.07.2025 in Civil Appeal No.9547/2025 of Hon'ble Supreme Court is as under: -

"1. Heard Mr Neeraj Kishan Kaul, the learned senior counsel appearing for the appellant.

2. The learned counsel appearing for the appellant submits that he does not want to press this appeal with liberty to go back to the NCLAT as according to Mr. Kaul, the appeal was time barred and there was no application filed for condonation of delay.

3. The appeal is accordingly, dismissed as not pressed."

4. Present I.A. has been filed in pursuance of the aforesaid order.

5. A short reply has been filed by the Respondent and it is argued a bare perusal of the order dated 25.07.2025 would reveal no such liberty infact was granted by the Hon'ble Supreme Court and *vide* the present application the applicant has sought to challenge the aforesaid judgement and order dated 23.05.2025 solely on the ground the appeal filed by the appellant was time barred and it was not accompanied by an application for condonation of delay. It was argued the impugned order in the present case was passed by the Ld. Adjudicating Authority on 09.02.2023. The certified copy was applied on

02.03.2023 and it was made available on 06.03.2023. It was submitted if one excludes 5 days spent in obtaining certified copy of impugned order, from the statutory period of 30 days then the delay would only be of 3 days in filing the appeal. It is the case of the Respondent it rather filed an application seeking condonation of delay of 8 days in filing the appeal i.e. (without excluding 5 days in obtaining certified copy of the impugned order) and it served the said application alongwith the appeal upon this applicant herein as is evident from the documents annexed at Pages 11-17 of the short reply filed by the Respondent, but the Registry of this Tribunal asked the Respondent herein to remove the application, as is evident from the note sheet of the registry.

6. It was argued there is no fault on the part of the Respondent herein in not filing an application for condonation of delay for the reasons as evident from the defect sheet dated 31.03.2023 as well as scrutiny report dated 21.04.2023 of the Registry itself, wherein it is noted there was no delay in filing the appeal and it was primarily because of this reason the Respondent allegedly removed such application for condonation of delay. Moreso we note the applicant herein, who was the Respondent in main appeal, never took any objection *qua* delay in filing of the appeal. Moreso we observe the delay, if any, admittedly was within the condonable period of 15 days, as provided in Section 61(5) of the Code and that the Respondent has argued that its authorized person is a resident of Nagpur and was allegedly informed of the impugned order in February, 2023; had obtained pleadings and documents from its Advocate at Mumbai and thereafter took some time to engage an Advocate in Delhi to file an appeal and that the

Advocate at Delhi prepared the draft and thereafter the signed copy of the appeal was sent from Nagpur to Delhi and it led to delay of 8 days. Infact 3 days, if one deduct the time taken for obtaining certified copy of impugned order.

7. Thus in any case we are of the view the delay, if any, was within the *grace/condonable* period of 15 days, beyond the statutory period of 30 days. Further interestingly we note the applicant never pressed its appeal before the Hon'ble Supreme Court and had rather withdrawn it, hence the judgment dated 23.05.2025 was never set aside.

8. On these facts, we are of the considered view there was a genuine mistaken belief due to inadvertent wrong reporting of the Registry that there was no delay and hence it seems plausible such application for condonation, *if filed*, could have been removed by the Respondent; coupled with the fact that never any objection *qua* limitation was ever raised before us, hence we find the delay of 3 days in filing of the appeal, being within the *grace period* could very well be condoned if such application was on record and no objection was raised. Hence, non-raising of such objection by Respondent clearly shows *no prejudice was caused to it* over a short delay of 3 days.

9. Lastly an objection was raised that even today there is no written application before the Tribunal. In *Sesh Nath Singh and Another Vs Baidyabati Sheor Aphuli Cooperative Bank Ltd and another* (2021) 7 Supreme Court Cases, 313 the Hon'ble Supreme Court held as under: -

62.A plain reading of Section 5 of the Limitation Act makes it amply clear that, it is not mandatory to file an application in writing before relief can be granted under the said section. Had such an application been mandatory, Section 5 of the Limitation Act would have expressly provided so. Section 5 would then have read that the Court might condone delay beyond the time prescribed by limitation for filing an application or appeal, xxxx”

10. Thus we are not inclined to recall our order dated 23.05.2025 for reasons stated above as the delay was within the *grace* period, deemed to have been condoned, coupled with the fact the applicant also failed to raise such objection at relevant time. The application for recall of order dated 23.05.2025 is thus nothing but an attempt to initiate this appeal *de novo*. The application lacks merit and is dismissed.

**(Justice Yogesh Khanna)
Member (Judicial)**

**(Mr. Ajai Das Mehrotra)
Member (Technical)**

Bm

Dated -19.12.2025