

GATI - विधि

-LAW IN ACTION



Legal Updates

Supreme Court holds that once an Award is set aside, Court cannot proceed to grant further relief by modifying the Award

The Supreme Court, vide judgement dated 09.05.2023, in the case of *Indian Oil Corporation Ltd & Ors vs Sathyanarayana Service Station & Ors*, Civil Appeal No.3534 of 2023, has held that Court must leave the parties to work out their remedies in a given case even where it justifiably interferes with the award, but Court cannot after setting aside the Award proceed to grant further reliefs by modifying the Award.

In the said case, IOCL had terminated a petrol pump dealership upon request of the Respondent dealer, the request was however subsequently withdrawn by the dealer. The withdrawal was not accepted by IOCL, who took possession of the petrol pump and awarded the same to a new dealer. The sole Arbitrator upheld the termination of the dealership and subsequent award of the dealership by IOCL. In proceedings under Section 34 of the Arbitration & Conciliation Act, 1996, the Award was upheld as invulnerable. In appeal proceedings, the Hon'ble High Court set aside the award and directed the Respondent to be restored with the dealership within 3 months failing which the Respondent was held entitled to seek execution of the judgment and also seek necessary damages from IOCL and its officers.

The Supreme Court of India, vide order dated 01.05.2023, in *Sanket Kumar Agarwal & Anr v APG Logistics Private Limited* has held that to determine the time limit for filing an appeal under Section 61(2) of the Insolvency and Bankruptcy Code, 2016 ("IBC"), the duration it takes for the Tribunal to provide a certified copy of the order that is being challenged should be excluded from the computation of the time limit.

The NCLAT dismissed the appeal on 09.01.2023 for being time-barred. The appeal was filed through the e-portal on 10.10.2022, which was filed 46 days after the NCLT order. However, according to Section 61 of the IBC, an appeal against an NCLT order must be filed within 30 days, and the NCLAT can only extend this period by up to 15 days if there is sufficient reason. Section

61 of the IBC does not suggest that an aggrieved person must wait until they obtain a certified copy of the disputed order before filing an appeal. Therefore, the appeal was deemed to be barred by limitation as it was filed on the 46th day after the NCLT order, exceeding the maximum limit of 45 days permitted under Section 61 of the IBC.

The Supreme Court observed that an order of the NCLT was pronounced on 26.08.2022. Rule 3 of the NCLAT Rules 2016 mandates that the date of pronouncement of an order must be excluded while calculating the limitation period. This is consistent with Section 12(1) of the Limitation Act, 1963. If the 45-day limitation period specified in Section 61 of the IBC is computed by excluding the date of the NCLT order, i.e., 26.08.2022, the period would end on 10.10.2022 (the date when the appeal was filed online). Therefore, the NCLAT had erroneously dismissed the appeal on the grounds that it was filed on the 46th day, when in reality, it was submitted on the 45th day. As a result, the bench overturned the NCLAT's decision.

The Bench also noted that under Rule 22(2) of the NCLAT Rules 2016, it is mandatory to submit a certified copy of the challenged order along with the appeal. The Appellant had applied for a certified copy of the order from Delhi to NCLT Chennai on 02.09.2022, and it was received by NCLT Chennai on 05.09.2022, within the 30-day limitation period prescribed in Section 61(2) of IBC. This demonstrated that the Appellant had acted with due diligence.

The Bench held that since the Appellant received the certified copy on 15.09.2022, the time taken by the court between 05.09.2022 and 15.09.2022 to provide the certified copy should have been excluded when calculating the limitation period under Section 61(2) of IBC.

As a result, the appeal has been allowed and the NCLAT order has been overturned. The Supreme Court has instructed the NCLAT to re-examine the matter on its merits.

The NCLT, Mumbai Bench, vide its order dated 28.04.2023 in *Chandrasekhar Export Pvt. Ltd v. Babanraoji Shinde Sugar & Allied Industries Ltd.* has held that the Operational Debt claimed must be crystallized, undisputed and not something which requires adjudication by a competent authority.

The Petitioner had filed the petition under Section 9 of the IBC read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rules, 2016 for recovery of unresolved Operational Debt of Rs. 4,42,54,918/-. The Petitioner had paid Rs. 3,00,00,000/- to the Respondent as advance for supply of molasses pursuant to the sale agreement executed between them. However, the Respondent failed to meet its obligation as per the agreement and thereafter returned Rs. 96,00,000/- to the Petitioner. During the adjudication of the present petition, the balance principal amount was also returned to the Petitioner. The Petitioner further claimed Rs. 1,70,00,000/- as compensation which it had to pay to its client and further Rs. 68,45,918/- as interest on the total amount.

The NCLT observed that for a liability to be deemed as Operational Debt must be first adjudicated and damages, if any, be assessed by the appropriate authority of law. The claimed compensation of Rs. 1,70,00,000/- cannot be become Operational Debt as the same is not verified by the competent authority and amount is disputed. Further with regard to interest of Rs. 68,45,918/-, it was observed that the same cannot be allowed as the sale agreement does not provide for payment of interest on advance amount.

The NCLT, Mumbai Bench, vide order dated 12.04.2023, in *M/s Wellcome Steel v. Kavish International trading Private Limited* has held that the requirements under Section 9 of the IBC is mandatory and cannot be skipped.

The Applicant had filed the application under Section 9 for the IBC seeking initiation of Corporate Insolvency Resolution Process (“CIRP”) against the Respondent/Corporate Debtor. The Operational Creditor issued demand notice in form-3 upon the Corporate Debtor, who has failed to make the full payment. The Bench found out that all the requirements on the part of Operational Creditors stipulated under Section 9 of the IBC was fulfilled, except for filing of affidavit under Section 9(3)(b) of the Code.

Supreme Court clarifies the limitation period for filing an appeal to the NCLAT will exclude the time taken in preparation of the certified copy of the impugned order.

NCLT holds that Operational debt claimed, must be crystallized, undisputed and not something which requires adjudication by the competent authority.

NCLT holds that Affidavit under Section 9 of the IBC is a mandatory requirement for initiation of CIRP.

It was observed that affidavit under Section 9(3)(b) of the IBC is required to be filed and the same must be in relation to the notice of dispute with regard to receipt or non-receipt of the payments made by the Corporate Debtor. The Application was dismissed on the ground of non-filing of the Affidavit under section 9 (3) (b) of the IBC.

The Telecom Regulatory Authority of India (“**TRAI**”), vide its press release dated 02.05.2023, has released recommendations on "Ease of Doing Business in Telecom and Broadcasting Sector". TRAI, on 08.12.2021, had suo-moto floated a Consultation paper on the aforesaid subject, requiring comprehensive review of end-to-end processes with 'Whole of the government' approach. Pursuant to the receipt of comments, counter comments and an open house discussion, TRAI has come up with these recommendations, proposing proposes the establishment of a standing committee with focus on Ease of Doing Business (“**EoDB**”). Some of the salient features of these recommendations are as below:

1. The recommendations propose to establish a user-friendly, transparent and responsive digital single window system-based portal. The portal should be enabled with new digital technologies for achieving end-to-end inter- departmental online processes.
2. Each Ministry to establish a standing EoDB Committee to regularly review, simplify and update the existing processes and ensure ease of doing business as an on-going activity.
3. Ministry of Information and Broadcasting (“**MIB**”), Department of Telecommunications (“**DoT**”), Department of Space (“**DOS**”), Ministry of Electronics, and Information Technology (“**MeitY**”) and other agencies should specify stage-wise timelines for all the processes including initial as well as additional permissions, which should be mentioned in the respective Guidelines/ policy and updated in the Citizen Charter.
4. The Government may consider and grant 'Infrastructure Status' to 'Broadcasting and Cable Services Sector'.
5. Wireless Planning & Coordination, DoT should charge the spectrum royalty fee for temporary uplinking of live events on pro-rata basis for actual number of days of the event.
6. A simple mobile app should be developed by MIB for registration of Local Cable Operators (“**LCOs**”). Request for cancellation before 5 years should also be enabled.
7. The RoW portal (“**Gati Shakti Sanchar Portal**”) should incorporate all the service providers including LCOs. DoT should enable RoW approvals for LCOs also in consultation with MIB. A hyperlink / button icon should be provided on the portal and app to reach the RoW portal.
8. MIB should maintain common database of registered LCOs. List of the registered LCOs should also be made available to the public at large.
9. The recommendations aim to reduce the compliance burden on the Internet Service Providers (“**ISPs**”).
10. The TRAI also prescribes recommendations for laying and repair of submarine cables which to classified as 'Critical and Essential services'. Permissions of laying, operations and \maintenance of submarine cables network to be made online as a part of Saral Sanchar portal. Further, a committee should review the international best practices and feasibility for identifying and declaring special corridor in Indian marine context.
11. The process of surrender of DoT license, issuance of No Objection Certificate (“**NOC**”) and release of Bank Guarantees to the service providers should be made simple, online and time bound.
12. DoT should formulate a working group to study and exempt Equipment Type Approval (“**ETA**”)/ Import License for devices having wireless sensors emitting very low power below a prescribed level.
13. For Mandatory Testing and Certification of Telcom Equipment (“**MTCTE**”) scheme, a committee comprising of two members each from: (i) Telecommunication Engineering Centre (“**TEC**”), (ii) Original Equipment Manufacturer (“**OEM**”), (iii)Service providers and (iv)Consumers. The members of the committee should be appointed on rotational basis. The Committee should revisit the mode of compliance for testing of products and consider modular implementation of product testing.
14. The Government should incentivize setting up of labs in India and should do lab assessment before notifying new phases of MTCTE.
15. To avoid duplicity in testing of telecommunications products, DoT should constitute a standing committee comprising two senior level officers of Joint Secretary level each from i) MeitY, ii) Department of Telecommunication – Wireless Planning and Coordination (“**DoTWPC**”) , iii) TEC, iv) Bureau of Indian Standards (“**BIS**”) and v) Two representatives from product

**TRAI releases
Recommendations on
"Ease of Doing Business
in Telecom and
Broadcasting Sector"**

manufacturers. The committee should clearly identify a single testing scheme under which the product needs to be tested.

16. DOS should publish a list of Indian satellites details and the capacity availability and approved foreign satellites/satellite systems, their orbital locations, transponders and frequency availability and their other technical and security parameters on the single window portal.
17. MeitY in consultation with BIS should define stage-wise timelines for registration under Compulsory Registration Scheme in respect of product certification.

TRAI, vide its press release dated 12.05.2023, has issued a direction to stop misuse of Message Templates, under Telecom Commercial Communication Customer Preference Regulations, 2018 (“TCCCPR-2018”). This is in continuation of its earlier direction dated 16.02.2023 to stop misuse of Headers and Message Templates. TRAI has issued following directions to Access Providers to:

1. The use of more than three variable parts in the contents shall be permitted only with proper justification and additional checks with a condition that after examining the sample message, reasons and proper justification for more variables shall be recorded by the competent authority designated by the Access Provider for this purpose and such authority shall be different from the authority designated for the approval of content templates;
2. Each variable part needs to be pre-tagged for the purpose it is proposed to be used and minimum thirty percentage of message should comprise of fixed part so that intent of the original message, for which the content template was approved, is not changed by the intermediaries.
3. It has also been decided that only whitelisted URLs/ Apks / OTT links / call back numbers shall be allowed in the content template.
4. The Access Providers to ensure the use of an URL containing both fixed and variable parts, wherein the fixed part of URL is whitelisted;
5. To monitor the use of content templates and further, stop any misuse of special templates; and
6. The Access Provider to update the Code of Practice accordingly within 15 days and furnish compliance report of the above direction within 45 days from date of issue of this direction.

TRAI issues Directions to Access Providers to stop misuse of Message Templates, under TCCCPR-2018

A-142, Neeti Bagh
New Delhi – 110 049, India
T: +91 11 4659 4466 F: +91 11 4359 4466
E: mail@neetinyaman.co
W: www.neetinyaman.co

Office No. 501, 5th Floor,
Rehman House Premises CHS,
Nadirsha Sukhia Street, Fort,
Mumbai-400001, India

Disclaimer: ‘GATI-विधि: LAW IN ACTION’ is for information purposes only and should not be construed as legal advice or legal opinion. Its contents should not be acted upon without specific professional advice from the legal counsel. All rights reserved.