

## Supreme Court settles the law on ‘Certified copies’ for filing appeal against NCLT Orders

Recently, in ***State Bank of India v. India Power Corporation Ltd.***, Civil Appeal 10424 of 2024, the Hon’ble Supreme Court adjudicated upon the issue of certified copy of Order that is filed along with the appeal.

The Hon’ble Supreme Court analysed several provisions of NCLT Rules and NCLAT Rules and held as follows:

- i) Both the certified copy submitted free of cost as well as the certified copy which is made available on payment of cost are treated as “certified copies” for the purpose of Rule 50 of NCLT Rules.
- ii) However, a litigant who does not apply for a certified copy cannot then fall back and claim that he was awaiting the grant of a free copy to obviate the bar of limitation.

### Existing Jurisprudence

In accordance with Section 61 of Insolvency and Bankruptcy Code, 2016, any person aggrieved by the order of the National Company Law Tribunal (**NCLT**) may prefer an appeal to the National Company Law Appellate Tribunal (**NCLAT**) within 30 days from the date of the order of NCLT, which period may further be extended by 15 days on sufficient cause being shown before NCLAT. The period of 30 days is counted from the date of the Order of NCLT<sup>1</sup>

Rule 22(2) of National Company law Appellate Tribunal Rules, 2016 (**NCLAT Rules**), provides that every appeal is required to be accompanied by a certified copy of the impugned order.

Further, Rule 50 of the NCLT Rules mandates the Registry to provide a certified copy of final order passed to the



parties concerned free of cost. It further clarifies that the certified copies may be made available with cost (as per the Schedule of Fees), in all other cases.

Furthermore, Rule 150(3) of the NCLT Rules also provides that “a certified copy of every order passed by the Hon’ble Tribunal shall be given to the parties.”

Moreover, Entry 31 of the Schedule of Fees in NCLT Rules provides fees for “obtaining certified true copy of final order passed to parties other than the concerned parties under Rule 50.” Thus, the parties to the proceeding are provided certified copy of the order free of cost as envisaged under the NCLT Rules.

In the case of ***V. Nagarajan vs. SKS Ispat and Power Ltd.***, (2022) 2 SCC 244 (**Nagarajan**), the Hon’ble Supreme Court adjudicated upon two questions: (i) when will the clock for

<sup>1</sup> V. Nagarajan vs. SKS Ispat and Power Ltd., (2022) 2 SCC 244

calculating the limitation period run for the proceedings under IBC; and (ii) is the annexation of the certified copy mandatory for an appeal to NCLAT. Before coming to the conclusions arrived at by the Hon'ble Supreme Court, it is important to note the facts of the said case. In the said case, the impugned order of NCLT was passed on 31.12.2019, and the same was uploaded on the NCLT website on 12.03.2020. However, the uploaded copy of the Order set out incorrect name of the judicial member and the corrected order was uploaded on 20.03.2020. In the said case, appellant claimed to have awaited the 'free of cost' copy and allegedly sought the same on 23.03.2020, however, the 'free of cost' copy was never received by the appellant and the appellant filed the appeal on 08.06.2020 along with an application seeking exemption from filing certified copy. It is in this context that the Hon'ble Supreme Court held as follows:

*“33. ... Sections 61(1) and (2) IBC consciously omit the requirement of limitation being computed from when the “order is made available to the aggrieved party” in contradistinction to Section 421(3) of the Companies Act. Owing to the special nature of IBC, the aggrieved party is expected to exercise due diligence and apply for a certified copy upon pronouncement of the order it seeks to assail, in consonance with the requirements of Rule 22(2) of the NCLAT Rules. Section 12(2) of the Limitation Act allows for an exclusion of the time requisite for obtaining a copy of the decree or order appealed against. It is not open to a person aggrieved by an order under IBC to await the receipt of a free certified copy under Section 420(3) of the Companies Act, 2013 read with Rule 50 of the NCLT Rules and prevent limitation from running. ...*

*34. On the second question, Rule 22(2) of the NCLAT Rules mandates the certified copy being annexed to an appeal. which continues to bind litigants under IBC. While it is true that the tribunals, and even this Court, may choose to exempt parties from compliance with this procedural requirement in the interest of substantial justice, as reiterated in Rule 14 of the NCLAT Rules, the discretionary waiver does not act as an automatic exception where litigants make no efforts to pursue a timely resolution of their grievance. The appellant having failed to apply for a certified copy, rendered the appeal filed before NCLAT as clearly barred by limitation.”*

Thereafter, the issue of whether a 'free of cost' certified copy can be considered as a 'certified copy' was discussed by the Hon'ble NCLAT on various occasions. The Hon'ble NCLAT in the case of **Munagala Roja Harsha Vardhini vs. Vardhansmart Private Limited**, Company Appeal (AT) (CH) (Ins) No.23/2024 (**Mungala**) and **M/s Whitehand Services vs. M/S ED Buildtech & Developers (Karnataka) Pvt Ltd.**, Company Appeal (AT) (CH) (Ins.) 29/ 2024 (**Whitehand**) held that a 'free of cost' certified copy is not a certified copy for the purpose of filing an appeal in terms of Rule 22(2) of the NCLAT Rules. It is worth noting that in both these cases the total delay in filing of the appeal was beyond 30 + 15 days as prescribe under Section 61 of IBC.

After the case of Nagarajan, on May 06, 2024, the Hon'ble Supreme Court in the case of Manan Chopra & Ors v Soni relators Pvt Ltd, Civil Appeal 5452 of 2024 issued a notice to Insolvency and Bankruptcy Board of India inter alia on the grounds of ambiguity in relation to the requirement to obtain a certified copy of order and enclose the same with the appeal.

### The instant case

In the instant case of **State Bank of India v. India Power Corporation Ltd**, the appeal was filed by SBI along with the "Free of Cost" certified copy within a period of 3 days after the 30 day period prescribed under Section 61 of IBC and within the 15 days condonable period. The two-member Bench of the Hon'ble NCLAT initially had a divergent view inter alia on the issue whether a 'free of cost' certified copy amounts to a "certified copy" under Rule 22(2) of NCLAT Rules. The Hon'ble Judicial Member held that in terms of the ingredients of Rule 22(2) of the NCLAT Rules, a party must take steps to apply for the certified copy (paid copy) of the order, and 'Free of Cost' copy is not a certified copy for the purposes of filing appeal before NCLAT. On the contrary, the Hon'ble Technical Member held that a copy of the order provided free of cost by the NCLT will qualify as a certified copy and be at par with the certified copy that would have been obtained on an application along with payment of requisite fees. Further, the Hon'ble Technical Member held that simply because the party has not applied for it, will not take away the character of the copy having been certified.

Considering the divergent view of the two-member bench, a third member bench was constituted to adjudicate the matter. The Hon'ble Third Member placed reliance on **V.**

**Nagarajan vs. SKS Ispat and Power Ltd.**, (2022) 2 SCC 244 (**Nagarajan**), **Mungala** (supra) and **Whitehand** (supra) and held that the right to obtain a free certified copy under Rule 50 of NCLT Rules did not obviate the obligation on the appellant to seek a certified copy by filing an application in consonance with Section 76 of the Indian Evidence Act, 1872.

However, on appeal, the Hon'ble Supreme Court, in the instant case, clarified the position laid down in the case of **Nagarajan** and observed that the facts in both the cases are different and allowed the appeal holding that 'free of cost' copy is also certified copy.

### Hon'ble Supreme Court's ruling

The Hon'ble Supreme Court analysed the NCLT Rules and NCLAT Rules. The Hon'ble Supreme Court distinguished the facts of the instant case from **Nagarajan's** case and held that in the latter case, the impugned order was dated 31.12.2019 and the appellant awaited the issuance of 'free of cost' copy, however, since, the free of cost copy was not made available to the appellant, the appellant filed the appeal before NCLAT on June 8, 2020 (beyond the 45 day period for filing appeal) with an application seeking exemption from filing certified cop.,

In this backdrop, the Hon'ble Supreme Court, in **Nagarajan**, held that an appeal, if considered necessary and expedient by an aggrieved party, is expected to be filed forthwith without awaiting a free copy which may be received at an indefinite stage. Any delay in receipt of a certified copy, once an application has been filed, is excluded from the limitation period. It is in this fact scenario, the Hon'ble Supreme Court held in **Nagarajan's** case that filing an application for certified copy is not just a technical requirement for computation of limitation but also an indication of the diligence of the aggrieved party in pursuing the litigation in a timely fashion.

In view of the above, in the instant case, the Hon'ble Supreme Court held that Rule 50 of NCLT Rules places free of cost certified copy and paid certified copy at the same footing and that there exists no distinction between the same. The Hon'ble Supreme Court further held that a litigant who does not apply for a certified copy cannot then fall back and claim that he was awaiting the grant of a free copy to obviate the bar of limitation.

Accordingly, the Hon'ble Supreme Court allowed the appeal and condoned the delay on the part of State Bank of India in filing the appeal before NCLAT, as the same was within the condonable period prescribed under Section 61(2) of the Code.

### Concluding remarks

From the aforesaid discussion and the existing jurisprudence, it is clear that no distinction can be drawn between a 'free of cost' certified copy and a 'paid' certified copy. In view of **Nagarajan** case and the instant case, the following scenarios emerge

Scenarios	Facts	Exclusion from the limitation period (30+15 days)
<b>Scenario A</b>	Demand for Certified Copy of impugned Order made within 30 days and appeal being filed within the 30 days period provided under Section 61 of the Code	Time taken for obtaining the Certified Copy after filing an application till receipt of certified copy is excluded from the limitation period
<b>Scenario B</b>	'Free of cost' copy demanded / received within 30 days and appeal also filed within the 30 days period provided under Section 61 of the Code	Time taken in preparation of Certified Copy is not excluded from the limitation period of 30 days extendable by 15 days
<b>Scenario C</b>	'Free of cost' copy demanded / received within 45 days	Time taken in the preparation of order cannot be excluded from the limitation period. However, an application for condonation of delay beyond 30 days can be filed.
<b>Scenario D</b>	'Free of cost' certified copy demanded / received after 45 days period	Appeal barred by limitation

## Key Contacts:

**Madhav Kanoria**  
Partner  
[madhav.kanoria@cyrilshroff.com](mailto:madhav.kanoria@cyrilshroff.com)

**Surabhi Khattar**  
Partner  
[surabhi.khattar@cyrilshroff.com](mailto:surabhi.khattar@cyrilshroff.com)

### Disclaimer

All information given in this alert has been compiled from credible, reliable sources. Although reasonable care has been taken to ensure that the information contained in this alert is true and accurate, such information is provided 'as is', without any warranty, express or implied as to the accuracy or completeness of any such information.

Cyril Amarchand Mangaldas shall not be liable for any losses incurred by any person from any use of this publication or its contents. This alert does not constitute legal or any other form of advice from Cyril Amarchand Mangaldas.

Should you have any queries in relation to the alert or on other areas of law, please feel free to contact us on [cam.publications@cyrilshroff.com](mailto:cam.publications@cyrilshroff.com)

**Cyril Amarchand Mangaldas**  
Advocates & Solicitors

**100<sup>+</sup>** years of legacy

**1000** Lawyers

**Over 200** Partners

Peninsula Chambers, Peninsula Corporate Park, GK Marg, Lower Parel, Mumbai 400 013, India  
T +91 22 6660 4455 E [cam.mumbai@cyrilshroff.com](mailto:cam.mumbai@cyrilshroff.com) W [www.cyrilshroff.com](http://www.cyrilshroff.com)  
Presence also in Delhi-NCR | Bengaluru | Ahmedabad | Hyderabad | Chennai | GIFT City | Singapore | Abu Dhabi