

# Sanket Kumar Agarwal & Anr vs APG Logistics Private Limited – Case Analysis

**Appellant:** Sanket Kumar Agarwal & Anr

**Respondent:** APG Logistics Private Limited

**Case No.:** Civil Appeal No 748 Of 2023

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**Legislation:** Section 7, 61, 61(1), 61(2), 62, 238, 238A of Insolvency and Bankruptcy Code (IBC) 2016; Section 12(1), 12(2) of Limitation Act 1963; Section 469, 420(2) of Companies Act, 2013; Rule 3 of NCLAT Rule 2016

## **Facts:**

- Mr Sanket Kumar Agarwal (Appellant) filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 before the National Company Law Tribunal (NCLT), seeking the initiation of the Corporate Insolvency Resolution Process against APG Logistics Private Limited (Respondent).
- The NCLT dismissed the application, and the appellant obtained a certified copy of the NCLT order on 15<sup>th</sup> September 2022.
- On 10<sup>th</sup> October 2022, the appellant e-filed an appeal before the National Company Law Appellate Tribunal (NCLAT) against the NCLT order, along with a physical copy of the appeal filed on 31<sup>st</sup> October 2022.
- The NCLAT dismissed the appeal as barred by limitation,

stating that it was filed on the 46th day following the NCLT order, exceeding the 30-day deadline prescribed by Section 61 of the IBC.

- Dissatisfied with the NCLAT's decision, the appellant appealed against the order to the Supreme Court.

### **Issues:**

- Whether the NCLAT erred in not exclude the date of the pronouncement of the NCLT order while calculating the limitation period for filing the appeal?
- Whether the NCLAT's requirement of physical filing in addition to e-filing is justified and in line with the modernization of the judicial process?

### **Arguments from the Appellant:**

- The appellant argued that the NCLAT had erred in dismissing the appeal as barred by limitation.
- The appellant contended that the appeal was filed within the 45-day period prescribed by Section 61 of the IBC when the date of the pronouncement of the NCLT order was excluded.

### **Arguments from the NCLAT:**

- The NCLAT defended its decision to require physical filing in addition to e-filing.
- The NCLAT cited administrative guidance and the need for physical documentation, suggesting that e-filing alone may not be sufficient for effective case management.

### **Ratio Decidendi:**

- The Supreme Court held that the NCLAT had erred in not excluding the date of the pronouncement of the NCLT order while calculating the limitation period.
- The Court referred to Rule 3 of the NCLAT Rules 2016 and Section 12(1) of the Limitation Act, 1963, which mandate the exclusion of the date of pronouncement of the order for calculating the limitation period.
- The Court emphasized the need for the judiciary and tribunals to modernize and adapt to technology.
- The Court criticized the NCLAT's practice of requiring physical filing in addition to e-filing.
- The Court stated that insisting on physical filing unnecessarily burdens litigants and the legal profession, acts as a disincentive for e-filing, and is not environmentally sustainable.

### **Final Judgment:**

- The Supreme Court set aside the NCLAT's order, ruling that the appeal was filed within the limitation period when the date of pronouncement of the NCLT order was excluded.
- The Court deprecated the NCLAT's practice of physical filing in addition to e-filing and called for a seamless transition to working in the electronic mode.
- The Court recommended that the Union Government, in its rule-making capacity, and the administrative heads of tribunals ensure compliance and take remedial steps to encourage e-filing across tribunals.
- A copy of the judgment was directed to be forwarded to the Chairperson of the NCLAT and the Secretaries to the Union Government in the Ministries of Finance, Corporate Affairs, and Law and Justice for necessary action.
- The appeal was allowed, and the NCLAT's order was set aside.

