

Discretionary waiver from Rule 22(2) of NCLAT Rules, which mandates the certified copy being annexed to an appeal, cannot be taken as an automatic exception by litigants

The Supreme Court in the case of **Ashdan Properties vs DSK Global Education and Research Pvt Ltd [Civil Appeal No. 10603 of 2024] dated August 12, 2025**, has observed that the incident that triggers the limitation to commence is the date of pronouncement of the order, and in a case of non-pronouncement of the order, when the hearing concludes, the date on which the order is pronounced or uploaded on the website. The Court also clarified that though the National Company Law Appellate Tribunal (NCLAT) is clothed with the powers to exempt time under Rules 14 and 15 of the NCLAT Rules, such powers cannot be exercised so as to render Rule 22(2) thereof nugatory.

The Apex Court reiterated that a discretionary waiver from Rule 22(2) of the NCLAT Rules, which mandates the certified copy being annexed to an appeal, does not act as an automatic exception where litigants make no efforts to pursue a timely resolution of their grievance. The Court cautioned that the exemption cannot be to the extent of completely dispensing with the filing of a certified copy, which would annihilate the clear mandate of Rule 22(2) of the NCLAT Rules, which categorically uses the word 'shall' to emphasize that an appeal must be accompanied by a certified copy of the order impugned.

The Apex Court added that the statute peremptorily requires proper institution of an appeal in conformity with all the prescribed norms, and it was incumbent upon the NCLAT to examine and verify as to whether the appeal was in due compliance with all such norms. Since a certified copy of the impugned order was filed belatedly without even filing a condonation application or without even seeking an exemption from the same, and the NCLAT had completely brushed aside this crucial aspect, the Court concluded that the judgment delivered by the NCLAT on merits is essentially a superstructure erected on an illusory foundation and cannot, therefore, be sustained.

Reference was made to the decision in the case of *V. Nagarajan v. SKS Ispat & Power Ltd. and others [(2022) 2 SCC 244]*, wherein it was observed that *"when timelines are placed even on legal proceedings, reading in the requirement of an "order being made available" under a general enactment (Companies Act) would do violence to the special provisions enacted under IBC where timing is critical for the workability of the mechanism, health of the economy, recovery rate of lenders and valuation of the corporate debtor. Hence, the omission of the words "from the date on which the order is made available" for the purposes of computation of limitation in Section 61(2) IBC, is a consistent signal of the intention of the legislature to nudge the parties to be proactive and facilitate timely resolution."*

The Court also reiterated that, though a waiver on filing an appeal without a certified copy is often granted for the purpose of judicial determination, it does not confer an automatic right on an applicant to dispense with compliance so as to render Rule 22(2) of the NCLAT Rules nugatory. Thus, the act of applying a certified copy is not just a technical requirement for the computation of limitation but also an indication of the diligence of the aggrieved party pursuing the litigation in a timely fashion.