NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Insolvency) No. 1095 of 2025

[Arising out of the Common Order dated 30.05.2025, passed by the 'Adjudicating Authority' (National Company Law Tribunal, Cuttack Bench in CP (IB) No. 39/CB/2024]

IN THE MATTER OF:

Cosmos CO-Operative Bank Limited
Through, authorized officer
Mr. Vishwas Agale King Koti Road
Hyderabad, Telangana-500029 **...Appellant**

Versus

Mr. Anil Kumar Gilra
Bajrakabati Road, Cuttack
Odisha-753001 Mr. Vishwas Agale
King Koti Road, Hyderabad Telangana **...Respondent**

Present:

For Appellant : Mr. Ramchandra Madan, Mr. Tushar Nigam and Mr. Himanshu Yadav, Advocates

For Respondent : Dr. Shiva Sanakar, Advocate

J U D G M E N T
(Hybrid Mode)

[Per: Arun Baroka, Member (Technical)]

The present Appeal is filed by the Appellant under Section 61 of the Insolvency and Bankruptcy Code, 2016 ("Code"), against the impugned order dated 30.05.2025 ("Impugned Order") passed by the Ld. National Company Law Tribunal, Cuttack (NCLT/Adjudicating Authority) in CP (IB) No. 39/CB/ 2024, whereby the Adjudicating Authority has dismissed a bankruptcy petition filed by the Appellant herein against the Respondent (Personal guarantor of the Corporate Debtor) on the ground that that the said

application was filed beyond the three month period provided in terms of Section 121 (2) of the Insolvency and Bankruptcy Code, 2016 ('IBC').

Submissions of the Appellant

2. Appellant which is the Financial Creditor namely Cosmos CO-Operative Bank Limited briefly brings the facts in the case as noted hereinafter.

3. During the period 2013-2017, the Appellant Bank sanctioned various credit facilities to the Corporate Debtor. The Respondent, Mr. Anil Kumar Gilra, being one of the directors of the Corporate Debtor, executed Deeds of Guarantee in his personal capacity, thereby acting as Personal Guarantor for the said credit facilities.

4. Subsequently, on 16.12.2019, the Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor commenced on an application bearing No. CP (IB) No. 44/CTB/2019. In view of the aforesaid, on 20.10.2020, the Appellant issued a demand notice to the Respondent under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019, demanding payment of the defaulted amount of Rs.87,25,02,828/-. As the Respondent failed to respond to the said demand notice, the Appellant was constrained to file an application under Section 95 of the IBC, registered as CP (IB) No. 12/CB/2021, seeking initiation of insolvency resolution-process against the Respondent, the Personal Guarantor. Upon presentation of the said application, the Ld. Adjudicating Authority, vide order dated 22.02.2022, appointed Mr. Saroj Kumar Prusty as Resolution Professional (RP) to submit his reasoned recommendation report

in terms of Section 99 of the IBC. Thereafter the RP submitted his report dated 28.02.2022 recommending admission of CP (IB) No. 12/CB/2021 and initiation of insolvency proceedings against the Respondent. The RP recorded that during the interaction the Respondent admitted that no payments had been made towards the defaulted amount.

5. Taking into account the findings of the RP and the admissions made by the Respondent, who in his objections had candidly admitted his inability to pay and expressed his willingness to be declared insolvent, the Ld. Adjudicating Authority, vide order dated 15.06.2022, admitted the Appellant's Section 95 application and initiated the Insolvency Resolution Process against the Respondent Personal Guarantor.

6. Pursuant to the initiation of the insolvency process, the RP convened a meeting of creditors on 01.09.2022 in terms of Section 107 of the IBC. During the said meeting, the Respondent Personal Guarantor expressed his inability to submit any repayment plan and stated that he had already disposed of his assets for livelihood purposes. Accordingly, the RP filed his report under Section 112 of the IBC noting that no repayment plan was received.

7. In view of the above, the RP filed an application under Sections 112 read with 115(2) of the IBC, registered as I.A. (IB) No. 250/CB/2022 in CP (IB) No. 12/CB/2021, seeking directions from the Adjudicating Authority to declare that the creditors were entitled to proceed with the bankruptcy of the Respondent Personal Guarantor. The Ld. Adjudicating Authority, while

disposing of the said application vide order dated 11.12.2023, categorically observed as follows:

> "In the situation since the debtor has not filed repayment plan in spite of giving sufficient time, this Adjudicating Authority intends to pass a further order as provided under Section 115(2) of IBC, 2016. Accordingly, the report is taken on file. **In consequence of non-filing of repayment plan by the debtor/personal guarantor, it is ordered that the debtor and creditors shall be entitled to file an application for bankruptcy under Chapter IV**. Thus, this application is allowed and disposed of."

8. The Appellant contends that it was not a party to the said application and was, therefore, unaware of the directions passed therein. Further the Resolution Professional failed to duly intimate the passing of the said order to the then Authorized Representative of the Appellant Bank and instead communicated the same to a former employee of the Bank, who consequently failed to apprise the Appellant of the said order. Therefore, the Bank was completely unaware of the passing of the aforesaid order dated 11.12.2023 and it was only on 03.06.2024 that the Appellant Bank became aware that it was entitled to file a bankruptcy application against the Respondent Personal Guarantor.

9. Appellant also brings to our notice that the credit facilities were sanctioned and disbursed at Hyderabad; the Appellant Bank's head office is situated at Pune; and the Respondent Personal Guarantor resides at Cuttack. Consequently, though the Appellant became aware of the order on 03.06.2024, the bankruptcy application could only be filed on 12.06.2024 vide CP(IB) No. 39/CB/2024 under Section 121 of the IBC, as considerable

time was spent in collating documents scattered across different branches and offices of the Appellant across India. Moreover, a further delay of 93 days was occasioned on account of the Authorized representative of the Appellant bank not being available at the relevant time to execute the documents.

10. Appellant contends that no prejudice whatsoever has been caused to the Respondent on account of the delay in filing the Section 121 application, which occurred solely due to inadvertence.

11. Appellant further claims that the Appellant was continuously in touch with the Respondent Personal Guarantor to explore the possibility of settlement and repayment, so that the Respondent could regularize the Corporate Debtor's account. In light of these ongoing discussions, the Appellant was of the bona fide belief that the Respondent would settle the dues, obviating the need for further legal action. However, the Respondent deliberately delayed the process under various pretexts with the sole intent of exhausting the statutory period available to the Appellant to file a Section 121 application.

12. In view of the foregoing facts and circumstances, the present additional affidavit is being filed to bring on record the genuine and bona fide reasons for the delay occasioned in filing the Section 121 application by the Appellant against the Respondent Personal Guarantor. Appellant contends that even though there was no requirement in law to file an application for condonation of delay, the Appellant by way of abundant caution, filed IA 224 of 2024 seeking condonation of 160 days. It is crucial to note that the actual delay if

any was only about 90 days from the three-month period prescribed under Sec. 121 (2) and not 160 days as inadvertently pleaded in the Application. The Appellant claims that it had adequately explained the reasons for the delay in the Application for Condonation of Delay where it was pointed out that the delay was owing to the unavailability of the authorized signatory during the relevant period and the time consumed in collating and compiling the requisite documentation. However, the Ld. Adjudicating Authority did not even consider the said contention of the Appellant to provide any reasons as to why such explanation was not adequate. Moreover, the Adjudicating Authority also failed to consider that no prejudice was caused to the Respondent on account of such delay and even any prejudice had been caused the same could adequately be compensated by payment of reasonable costs.

13. Appellant claims that the Respondents had never specifically denied the reasons provided by the Appellant in its application for condonation of delay and had instead only argued on the absence of jurisdiction of the Adjudicating Authority to condone such delay. While the Impugned Order fails to disclose any reasons for why it refused to condone the delay in filing of the Section 121 petition, even if it were to be assumed that the Authority had accepted the submissions of the Respondent on its lack of jurisdiction, the same would have been unsustainable in law.

14. Appellant contends that from the very language of Section 121(2) it is evident that the period of 3 months for filing of an Application for Bankruptcy is directory in nature and is not mandatory and therefore there was no occasion to seek condonation of delay to begin with.

15. Appellant places its reliance on the decision of this Hon'ble Appellate Tribunal itself in order dated 06.02.2025 in **Vysyaraju Kalpana v. State Bank of India & Ors CA (AT) (CH) (Ins) No. 52/2025** wherein condonation of delay of 335 days in filing application under Section 121 of the IBC was upheld.

16. Furthermore, Adjudicatory Authority even failed to consider the orders of its coordinate bench seated at Hyderabad which while condoning a delay of 182 days, has authoritatively held by way of Order dated 09.12.2024 in **State Bank of India v. Harikrishna Ploavarappu & Varam Bio Energy Pvt. Ltd. CP (IB)/98/2021** that though Section 121 (2) uses the word "shall" but since the provision is silent on the consequences for not complying with the said rule, hence the word "shall" used in Section 121(2) be taken as directory and not mandatory. Furthermore, the Ld. Tribunal even observed that the intention behind fixing the said timeline of three months is only to expedite the hearing process.

17. Adjudicating Authority also failed to take into consideration the Order dated 20.02.2024 passed by the Ld. NCLT Hyderabad in the case of **State Bank of India v A.N. Vijaya Raghavan & PPS Enviro Power Pvt. Ltd. CP (IB) No. 399/95/HDB/2020** wherein once again the Ld. NCLT held that "from the language used under Section 121(2) of IB Code, the three months' time prescribed for filing bankruptcy application is directory but not mandatory."

18. Thus, it is evident that the filing of a Bankruptcy Application under Section 121 of the IBC is not subject to a rigid statutory bar and thus there

is no bar in preferring an Application beyond a period of 3 months. It is a well-settled legal position that only where a statute expressly provides both an inner and an outer time limit for filing an appeal or application does the outer limit operate as an absolute bar, beyond which even the provisions of the Limitation Act do not apply as observed by the Hon'ble Supreme Court in the case of **Consolidated Engg. Enterprises v. Irrigation Deptt., (2008) 7 SCC 169** and **J.J. Merchant (Dr) v. Shrinath Chaturvedi, (2002) 6 SCC 635.** However, in the absence of any such express outer limit under Section 121, there exists no absolute prohibition against condonation of delay in filing an application under the said section.

19. Furthermore, position becomes further clear when contrasted with Section 61 of the IBC, which governs appeals before the Hon'ble NCLAT. Section 61 explicitly provides both an inner limit of 30 days and an outer limit of 15 additional days for filing an appeal, beyond which any delay in filing the appeal cannot be condoned as has been explicitly held by the Hon'ble Supreme Court in the cases of **Tata Steel Ltd vs Raj Kumar Banerjee 2025 SCC OnLine SC 1042** and **Kalpraj Dharamshi & Anr v. Kotak Investment Advisors Limited & Anr (2021) 10 SCC 401**. However, the absence of such an outer limit in Section 121 indicates that the Legislature did not intend for applications under this provision to be subject to a rigid inflexible bar. Section 121(2) merely prescribes a period of three months, functioning as an inner limit, for filing the application after an order under Section 115(2), and does not render the application non-maintainable beyond that period.

20. The Appellant has relied on the judgment of Honorable Supreme Court in **P.T. Rajan Vs. T.P.M. Sahir and Ors. (2003) 8 SCC 498** and contends that if a provision in a statute which is procedural in nature although employs the word "shall" may not be held to be mandatory if thereby no prejudice is caused. Furthermore, the Hon'ble Supreme Court in the case of **Rani Kusum v. Kanchan Devi, (2005) 6 SCC 705** has interpreted the word "shall" in a statute to mean 'may'. Both these judgments have been noted in detail by us in in our analysis hereinafter.

21. Further, there exist several provisions under the IBC which prescribe an inner time limit for the performance of certain actions. However, both the Hon'ble NCLAT and the Hon'ble Supreme Court have consistently held that when an outer limit is not prescribed, such timelines provided in the IBC are procedural in nature and intended to aid in the expeditious dispensation of justice hence not mandatory.

22. Illustratively, Section 7 of the IBC prescribes that the Adjudicating Authority 'shall within 14 days ascertain the existence of a default, however the same was held to be procedural in nature by this Hon'ble Tribunal in the case of **JK Jute Mills Company Limited v. Surendra Trading Company, 2017 SCC OnLine NCLAT 3**. Furthermore, in the aforesaid case even the 14 days' time limit prescribed by Section 9 and 10 of the Code for admitting or rejecting the CIRP applications was held to be directory and a tool of aid in expeditious dispensation of justice by the Hon'ble NCLAT. At this juncture it is most crucial to note that the above observation of the Hon'ble NCLAT was even affirmed by the Hon'ble Supreme Court in **M/S Surendra Trading**

Company V M/s Juggilal Kamlapat Jute Mills Company Limited & Ors (2017) 16 SCC 143.

23. Similarly, Section 106 of the IBC provides that the Resolution Professional 'shall' submit the Repayment Plan along with his Report within a period of 21 days, however this Hon'ble Tribunal in **Naseer Ahmed v. Ravindra Beleyur CA (AT) CH (Ins) No. 231/2025** has condoned the delay in submission of the said report observing that there is no specific restriction which has been imposed by the statute for a delayed submission and that the timeline prescribed in Sec. 106 is only directory in nature.

24. Therefore, it can be clearly inferred that both this Hon'ble Tribunal and the Hon'ble Supreme Court, in a catena of judgments, have consistently held that where statutory provisions under the IBC prescribe only an inner time limit, such provisions are to be interpreted as directory in nature and the stipulated timeline is extendable.

25. Appellant further contends that there is no mandatory timeline or limitation period for the purpose of filing of an Application under Section 121 of the IBC, therefore it is contended that in view of Section 238 A of the IBC, Section 5 of the Limitation Act shall still continue to apply with respect to filing of Applications where no outer time limit is prescribed. Therefore, the Adjudicating Authority has the power to consider and allow applications under Section 5 of the Limitation Act and condone the delay in filing of Applications under Section 121 of the IBC.

Submissions of the Respondent

26. The petition is non-maintainable in law. The reliefs sought are legally untenable, and thus, the petition is damnum sine injuria (a wrong without a legal remedy). The petition is completely mis-conceived and designed only to harass the petitioner by multiplying litigation. Respondent claims that averments made in the I.A do not reflect true state of affairs and the same are made only trying to defame by hook or crook and misleading this Hon'ble Court. The Appellant's pleadings are in *pari delicto* (self-contradictory) and replete with *suppressio veri, suggestio falsi* (suppression of the truth is the suggestion of a falsehood), warranting dismissal. The averments made in the I.A being self-contradictory, hence the Financial Creditor not entitled to any relief sought for. The Financial Creditor has taken resort to misleading facts inasmuch as false averments on affidavit by suppressing material facts only in order to obtain a favorable order by prejudicing this Hon'ble Court against the petitioner. The Financial Creditor has filed the application under Section 95 of IBC, 2016 for initiating Insolvency Resolution Process for Personal Guarantor to Corporate Debtor before this Hon'ble Tribunal which was failed and finally order was passed on dated 11.12.2023 with a direction to both the parties to file an application for bankruptcy under Chapter IV. The IBC, 2016 vide S- 121(2) suggest to file the Bankruptcy Application within a period of 90 days from the date of order passed by Adjudicating Authority. However, the petition was filed with an inordinate and fatal delay of 160 days. The statutory scheme of the IBC is mandatory and jurisdictional, leaving no room for judicial condonation of such delay. The Appellant's failure to provide a cogent explanation for each day of delay is fatal to its case, as *lex non cogit ad*

impossibilia (the law does not compel the impossible), but nor does it excuse indolence. The IBC, 2016 and Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtors) Rules, 2019 don't provide any express provision for condonation of delay.

27. The CP (IB) No. 12/CB/2021 has been filed by the appellant with affidavit and after the meeting with the appellant, the I.A No. 250/CB/2022 has been filed by the RP, which reflects from the petition of the I.A. Therefore, without appellant the said application cannot be adjudicated. He has knowledge about the passing of the order. The RP has also sent the mail to the appellant. But this fact has been suppressed by the appellant. In the delay condonation petition, the appellant has taken the ground that due to the non-availability of the authorized person and require supporting documents, the appellant has not filed the petition within time but it is very much unfortunate that the category of documents and the name of the authorized person and his difficulty to non-filling of the petition before the Learned NCLT Cuttack has not been described either before the learned NCLT Cuttack or before this Hon'ble Tribunal.

28. It is well settled position of law that each and every day has to be described for condonation of delay but it is not described by the Appellant in any petition. The Appellant has taken different grounds in every affidavit to suppress the material averments before this Hon'ble Tribunal, which reflects that the Appellant has not come to this Hon'ble Tribunal is a clean hand.

29. This I.A is otherwise liable to be dismissed for suppression of material facts and misleading statements made on affidavit.

Analysis and Evaluation

30. We have heard the counsels of both sides and also perused the material placed on record.

31. We note that the Adjudicating Authority had dismissed the CP (IB) No. 39/CB/2024, which was filed in terms of Section 121(2) of the Code for initiating bankruptcy proceedings against the personal guarantor namely Mr. Anil Kumar Gilra. While dismissing the petition, the Adjudicating Authority noted as follows:

> "3. The Submission made by the Respondent/Personal Guarantor in its reply are summarized herein:
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> i. The Respondent contends this application on the ground of limitation. This application is barred by time and it is not maintainable. The application under Section 95 of the Code was failed and finally order was passed on 11.12.2023 with direction to both the parties to file an application for bankruptcy under Chapter IV.
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> ii. The Applicant has filed the application at a delay of 160 days whereas Section 121(2) of the code prescribes that the Bankruptcy Application shall be filed within a period of 90 days from the date of passing of the order under Section 115(2) of the Code and there is no scope of condonation of delay as it is not prescribed in the Code. Hence, this present application is liable to be dismissed.
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> 4. We have heard the Learned Counsels for both the parties and have perused the documents available on record. This application is filed after 160 days and for that reason the applicant had filed a separate application to condone the delay. As the Adjudicating Authority is not inclined to condone

the delay in that application so the present application is not maintainable on the ground of limitation. Hence, the present petition is DISMISSED."

32. The question before us is *'Whether the period provided for filing of Bankruptcy application under Sec. 121(2) is mandatory or directory in nature.'*

33. A plain and meaningful reading of Section 121(2) demonstrates that the prescription of a three-month period for filing a bankruptcy application is directory in nature and not mandatory. Significantly, while the provision employs the expression 'shall', it does not stipulate any consequence for non-compliance with the said timeline, thereby indicating that the legislative intent was not to render such applications non-maintainable solely on account of delay.

34. We note that per the order of the Adjudicating Authority dated 11.12.2023, under Section 112 read with Section 115(2) of the Code, pronounced in CP (IB) No. 12/CB/2021 for allowing the creditors to proceed with the bankruptcy of the respondent personal guarantor. But it was only on 12.06.2024 that a CP (IB) No. 39/CB/2024 under Section 121 of the Code was filed by the Appellant. We thus find that undoubtedly, there is a delay in filing of the CP (IB) No. 39/CB/2024 under Section 121 of the Code.

35. We note that Section 121(2) of the Code provides that *"an application for bankruptcy shall be filed within a period of three months of the date of the order passed by the Adjudicating Authority under the Sections referred to in sub-section (1)"*. In the above provision, we note that there is no upper limit provided in this Section.

36. It is brought to our notice that only where a statute expressly provides both an inner and an outer time limit for filing an appeal or application, does the outer limit operate as an absolute bar, beyond which even the provisions of the Limitation Act do not apply as observed by the Hon'ble Supreme Court in the case of **Consolidated Engg. Enterprises (supra)** and **J.J. Merchant (Dr) (supra).** However, in the present case, there is an absence of any such express outer limit under Section 121, therefore, there exists no absolute prohibition against condonation of delay in filing an application under the said section. Thus, the filing of a Bankruptcy Application under Section 121 of the IBC is not subject to a rigid statutory bar and thus there is no bar in preferring an Application beyond a period of 3 months. Thus. in the absence of any express outer limit under Section 121, their exist no absolute prohibition against condonation of delay in filing an application under the said section.

37. We are also informed that there are host of decisions rendered in the context of the IBC wherein provisions providing timelines under the Act, that do not provide for an outer limit have been held to be directory and not mandatory in nature. As an illustration, it is brought to our notice that the Hon'ble Supreme Court in **Surendra Trading Company (supra),** has held:

a. The obligation of Petitioner under proviso to Sec. 9(5) to cure defects within 7 days to be directory and not mandatory.

b. The obligation of Petitioner under proviso to Sec 7(5) to cure defects within 7 days to be directory and not mandatory.

c. Mandate of Adjudicating Authority to ascertain existence of default under Section 7 of the IBC within 14 days is directory and not mandatory.

d. Mandate of Adjudicating Authority to ascertain existence of default under Sections 9 and 10, within a period of 14 days was directory and not mandatory.

38. Similarly, this Appellate Tribunal has in ***Naseer Ahmed (supra),*** has held that the obligation of the Resolution Professional under Section 106 of the IBC to submit the repayment plan along with the report within 21 days was directory in nature and the delay caused in filing of such report could be condoned.

39. The aforesaid interpretations rendered by both the Hon'ble Supreme Court and this Hon'ble Tribunal make it clear that in the absence of an outer time period, the timelines provided under the Code are ordinarily to be interpreted as directory provisions, an aid to the process, and not as mandatory provisions.

40. Furthermore, for canvassing the directory nature of Section 121(2) the appellant has relied on the judgments of the Hon'ble SC wherein the Apex Court, while dealing with similar statutory provisions prescribing the performance of a duty within a specific time frame, has interpreted such time limits as directory rather than mandatory. We observe that the Hon'ble Supreme Court in the case of **P.T. Rajan (supra)** observed that where a statutory functionary is asked to perform a statutory duty within the time prescribed therefor, the same would-be directory and not mandatory. It is further crucial to note that in **P.T. Rajan (supra)** the Hon'ble Supreme Court

further held in para 49 that a provision in a statute which is procedural in nature although employs the word "shall" may not be held to be mandatory if thereby no prejudice is caused. In the present case, Section 121(2) of the IBC prescribes a three-month period for filing the application but does not provide for any adverse consequence in the event of non-filing within this time. In the absence of any penal consequence, and in view of the law laid down in **P.T. Rajan (supra),** it can be interpreted that the said timeline is directory and not mandatory. Therefore, even though Section 121(2) uses the term "shall," the provision ought not to be construed as imposing a rigid, non-extendable deadline.

41. Furthermore, it is brought to our notice that the Hon'ble Supreme Court has on numerous occasions interpreted the word "shall" in a statute to mean 'may'. An analogous position can be seen in the context of the time limit prescribed for filing Written Statements by defendants under Order VIII Rule 1 of the CPC, 1908. The Hon'ble Supreme Court in the case of **Rani Kusum (supra)** held that:

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> 10. All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the statute, the provisions of CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice.

....

12. The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in the judges to act ex debito justitiae where the tragic sequel otherwise would be wholly inequitable. Justice is the goal of jurisprudence, processual, as much as substantive. (See Sushil Kumar Sen v. State of Bihar [(1975) 1 SCC 774])

13. .... A procedural law should not ordinarily be construed as mandatory; the procedural law is always subservient to and is in aid to justice. Any interpretation which eludes or frustrates the recipient of justice is not to be followed. (See Shreenath v. Rajesh [(1998) 4 SCC 543: AIR 1998 SC 1827].)

14. Processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice.

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42. In view of the above observations of the Hon'ble Supreme Court, the word 'shall' used in Section 121(2) of the IBC could be interpreted as 'may'. Thus, in the light of the aforesaid settled position of law, although Section 121(2) uses the word '*shall*', the same cannot be construed as imposing a rigid or inflexible mandate. In the absence of any consequence for non-compliance and considering that the provision is procedural in nature, we can interpret the expression '*shall*' as *directory.* Accordingly, the prescribed period of three months can be treated as a guiding timeline intended to ensure expeditious disposal, and not as a bar that defeats a bonafide bankruptcy application on technical grounds. Accordingly, it can be safely concluded that Section 121(2) does not impose a strict bar on filing an application under Section 121(1) even

after the expiry of three months from the date of the order passed under Section 115.

43. Furthermore, the appellant while referring to the Bankruptcy Law Reforms Committee (BLRC), report has also brought to our notice the legislative intent behind Section 121(2). It is informed to us that the scheme of personal insolvency under the Insolvency and Bankruptcy Code, 2016 stands in marked contrast to the corporate insolvency framework, where adherence to strict timelines is the very essence of the Corporate Insolvency Resolution Process ("CIRP"). In the corporate regime, the Code mandates a time-bound process culminating in an automatic transition into liquidation, in the absence of resolution, thereby ensuring certainty and value maximization. However, under the personal insolvency regime, the legislative intent is fundamentally different. The legislature has consciously refrained from making the process strictly time-bound. This distinction is rooted in the recognition that bankruptcy, in the case of individuals, carries serious civil consequences and has a direct bearing on the dignity and livelihood of a person which relates directly to his fundamental and human rights as enshrined under Article 21 of the Constitution. Consequently, unlike the corporate framework, there is no automatic commencement of bankruptcy proceedings upon the conclusion of the Insolvency Resolution Process ("IRP") in personal insolvency. Instead, the Code provides a further window of three months under Section 121 for filing a bankruptcy application, thereby preserving an opportunity for the parties to explore settlement. The Bankruptcy Law Reforms Committee (BLRC), whose recommendations form

the bedrock of the IBC, has expressly recognized this rationale. The BLRC notes that the interregnum between the conclusion of the IRP and the initiation of bankruptcy proceedings is deliberately intended to allow parties to negotiate and arrive at a settlement, even outside the formal framework of the IRP. In view of the aforesaid legislative intent, it is evident that the absence of a rigid outer limit for filing a bankruptcy application is a conscious policy choice. The three-month period under Section 121 is thus intended to be facilitative and not restrictive, ensuring that genuine attempts at settlement are not foreclosed. Any interpretation imposing a strict or inflexible limitation would defeat the very object sought to be achieved by the legislature and the BLRC. Furthermore, if Section 121(2) were to be held to be mandatory, the object to encouraging banks to settle debts outside of the court process would be completely defeated, and banks would be encouraged to file for bankruptcy forthwith, even when the same could have been avoided. Such an interpretation would thus defeat the intention of the legislature to encourage settlement through mediation, outside the court process. Thus, we find that the deliberate omission of an outer cap clearly indicates that the legislature did not intend to impose a rigid or inflexible bar on the filing of bankruptcy applications beyond the period of three months.

44. Appellant also places its reliance on the decision of this Appellate Tribunal itself in order dated 06.02.2025 in **Vysyaraju Kalpana (supra)** wherein, while upholding the condonation of delay of 335 days in filing application under Section 121 of the IBC, it was categorically observed that when Section 121(2) itself does not impose any restraint while prescribing

three months as the upper limit for filing a bankruptcy application under Section 121(1), the limitation provided under Section 121(2) must be construed as directory in nature. This Court in para 10 of the said judgement observed:

> "We are of the view that when the provision in itself does not create any embargo while prescribing three months' time, as an upper limit for the purposes of initiation of the proceedings under Section 121(1) of 1 & B Code, 2016, in that eventuality the aspect of limitation contained under Section 121(2) of 1 & B Code, 2016, though despite of the fact that it uses the word 'shall', will have to be taken as to be directory in nature, as the provision itself does not prescribe a restraint in extension of time, so as to attract Section 238A of 1 & B Code, 2016."

45. We were also informed about the comparison of the provisions under Section 121 with the provisions under Section 7 of the Code, which prescribes that the Adjudicating Authority “shall” within 14 days ascertain the existence of a default. However, the same was held to be procedural in nature by this Tribunal in **JK Jute Mills Company Limited (supra)**. Furthermore, in the aforesaid case even the 14 days' time limit prescribed by Section 9 and 10 of the Code for admitting or rejecting the CIRP applications was held to be directory and a tool of aid in expeditious dispensation of justice by the Hon'ble NCLAT. This was even affirmed by the Hon'ble SC in appeal in **M/s Surendra Trading Company (supra).**

46. Another illustration given by the Appellant is with respect to Section 106 of the Code which provides that the RP ‘shall’ submit the repayment plan along with his report within a period of 21 days. This Appellate Tribunal in **Naseer Ahmed (supra)** has condoned the delay in submission of the said

report observing that there is no specific restriction which has been imposed by the statute for a delayed submission and the timeline prescribed in Section 106 is only directory in nature.

47. We further observe when Section 121 is contrasted with Section 61 of the IBC, which governs appeals before this Appellate Tribunal, the position becomes even more evident. Section 61 explicitly prescribes both an inner limit of 30 days and a strict outer limit of an additional 15 days, beyond which delay cannot be condoned. The Hon'ble Supreme Court has unequivocally affirmed this position in **Kalpraj Dharamshi v. Kotak Investment Advisors Ltd.,** and **Tata Steel Ltd. v. Raj Kumar Banerjee**, holding that once the outer limit expires, the Appellate Tribunal is divested of jurisdiction to condone delay. However, Section 121 does not prescribe any such outer limit. The deliberate omission of an outer cap clearly indicates that the legislature did not intend to impose a rigid or inflexible bar on the filing of bankruptcy applications beyond the period of three months.

48. We have already noted that the IBC contains several provisions prescribing timelines for performance of certain acts; however, in the absence of a specified outer limit, such timelines have consistently been interpreted by the Hon'ble Supreme Court and this Appellate Tribunal as directory and procedural in nature, intended only to facilitate expeditious adjudication.

49. As we have noted herein separately that both this Appellate Tribunal and the Hon'ble Supreme Court have, in a catena of judgments, consistently held that where statutory provisions under the IBC prescribe only an inner

time limit, without any corresponding outer limit, such timelines are to be construed as directory in nature and are capable of extension in appropriate cases. In addition to the absence of an outer limitation period, the statutory framework of the IBC itself expressly incorporates the applicability of the Limitation Act. Section 238A of the IBC provides that the provisions of the Limitation Act, 1963 shall apply to proceedings under the Code insofar as they are not inconsistent with its provisions. In the absence of any inconsistency or express exclusion under Section 121, the provisions of the Limitation Act continue to apply in full force. Consequently, Section 5[1] of the Limitation Act squarely applies, thereby empowering the Adjudicating Authority as well as this Hon'ble Appellate Tribunal to condone delay upon sufficient cause being shown. The refusal to exercise such jurisdiction, therefore, constitutes an error of law.

50. On the other hand, the Respondent claims that the Appellant's plea that Section 121(2) of the IBC is merely directory is misconceived, as the provision fixes a mandatory three-month limit binding on the applicant. Whether the delay is 90 or 160 days makes no difference since both are beyond the statutory period. The contention that no prejudice is caused is also untenable, as delayed bankruptcy proceedings themselves seriously prejudice the guarantor by prolonging uncertainty. Further, the reliance placed on judgments treating procedural timelines as directory is misplaced, because

[1] **5. Extension of prescribed period in certain cases.** —Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

Section 121(2) is a limitation provision and not a procedural direction to the Tribunal. Likewise, Section 238A and the Limitation Act cannot be invoked to override a specific limitation prescribed under the IBC.

51. Having gone through the legal precedents and also the in the facts and circumstances of the case and the arguments presented by both sides we find that there is no mandatory timeline or limitation period for the filing of an application under Section 121 of the Code. Therefore, in view of Section 238A of the Code, Section 5 of the Limitation Act shall apply with respect to filing of the Applications where no outer limit is prescribed. Thus, the time for filing of appeal as provided under Section 121(2) of the IBC is directory in nature and non-filing of the Bankruptcy Petition within 3 months is not fatal. Further, unless the statute does not exclude the provisions of the Limitation Act the same continue to be applicable. Pertinently, the IBC under Sec. 238A specifically recognizes that the provisions of the IBC would continue to be applicable unless they were specifically excluded. Therefore, we find that the Adjudicating Authority has the power to consider and allow the applications under Section 5 of the Limitation Act and condone the delay in filing of Applications under Section 121 of the Code.

52. Therefore, the Adjudicating Authority could have condoned the delay and erred in dismissing the petition.

Conclusions

53. In view of the aforesaid facts and settled position of law, we can conclude that the Impugned Order is unsustainable, having been passed without assigning reasons, and in disregard of the statutory scheme of the

IBC as well as binding judicial precedents. Adjudicating Authority has erroneously treated Section 121(2) as a rigid and mandatory bar and it has not appreciated that the provision is directory in nature, and Adjudicating Authority could have exercised the jurisdiction vested in it to condone delay, particularly when such power flows from Section 238A of the IBC read with Section 5 of the Limitation Act. The Impugned Order is therefore unsustainable. We can therefore condone the delay in filing the Section 121 application, and restore the Bankruptcy Petition for adjudication on merits.

Order

54. Having held the petition to be maintainable, we allow the appeal and set aside the judgment / impugned order dated 30.05.2025 passed by NCLT, Cuttack in CP (IB) No. 39/CB/2024. On presentation of the Adjudicating Authority should accordingly take necessary action to issue necessary orders on merits with respect to issuing of the bankruptcy order and appointment of the bankruptcy trustee as per the application in CP (IB) No. 39/CB/2024 within 15 days its presentation but not beyond 45 days of the issue of this order. All related IAs are disposed of.

[Justice N Seshasayee]
Member (Judicial)

[Arun Baroka]
Member (Technical)

New Delhi.
June 30, 2026.

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