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**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

SANJAY KUMAR; J., ALOK ARADHE; J.

CIVIL APPEAL NOs. 3625-3628 OF 2025; December 10, 2025

M/s. Shri Karshni Alloys Private Limited *versus* Ramakrishnan Sadasivan

Insolvency and Bankruptcy Code, 2016 - Liquidation Process - Private Sale - Regulation 33(2)(d) vs. 33(2)(c) - NCLT Rules, 2016 — Rule 15 — Power to Extend Time and Impose Forfeiture - Supreme Court clarified that a sale initiated after the failure of public auctions and the decision of stakeholders to sell assets at scrap value, which then proceeds *via* an application for NCLT approval, falls squarely under Regulation 33(2)(d) (sale with prior permission of Adjudicating Authority) rather than Regulation 33(2)(c) - Under Rule 15 - the NCLT has the power to extend time for payment upon such terms as the justice of the case requires - Where a purchaser fails to meet their own committed timelines and seeks extensions, the NCLT is justified in stipulating a forfeiture clause for any future deviations to ensure the expeditious resolution of the liquidation process.

Indian Contract Act, 1872 - Section 74 - Inapplicability to Court -Supervised Sales - Doctrine of Approbate and Reprobate - Conduct of Litigant - A forfeiture condition stipulated by the NCLT while granting an extension of time in a liquidation proceeding cannot be equated with a forfeiture clause in a private contract - a defaulting purchaser cannot invoke Section 74 of the Indian Contract Act to seek a refund on the grounds that the stakeholders suffered no actual loss - A party cannot "approbate and reprobate" by acting upon an order (e.g., making partial payments after an extension is granted) and subsequently assailing the conditions of that same order - **Appeal dismissed. [*Relied on: Kridhan Infrastructure Private Limited vs. Venkatesan Sankaranarayan and others*, (2021) 6 SCC 94; Paras 12-19]**

For Appellant(s): Mr. Mukul Rohatgi, Sr. Adv. Mr. Jaideep Gupta, Sr. Adv. Mr. S.D. Singh, Adv. Ms. Bharti Tyagi, AOR Ms. Shweta Sinha, Adv. Ms. Racheeta Chawla, Adv. Mr. Ram Kripal Singh, Adv. Mr. Siddharth Singh, Adv.

For Respondent(s): Mr. Aditya Verma, AOR Mr. K. Rigved Prasad, Adv. Mr. Mayan Jain, Adv. Ms. Parkhi Rai, Adv.

J U D G M E N T

SANJAY KUMAR, J

1. Company Appeal (AT)(CH)(Ins) No. 443 of 2022 was filed by M/s. Shri Karshni Alloys Private Limited before the National Company Law Appellate Tribunal, Chennai Bench¹, assailing the order dated 29.06.2022 passed by the National Company Law Tribunal, Chennai Bench², in I.A. No. (IBC)/512 (CHE)/2021 in TCP/95/2017. Company Appeal (AT)(CH)(Ins) No. 438 of 2022 was also filed by it before the NCLAT against the order dated 10.08.2022 passed by the NCLT in I.A. No. 952/2022 in TCP/95/2017. Both the appeals were heard by a bench composed of two Members and they delivered separate judgments on 20.10.2023. However, the Member (Judicial) disagreed with the judgment authored by the Member (Technical). The Member (Technical) had partly allowed the appeals while the Member (Judicial) was inclined to dismiss them in their entirety. Owing to their difference in opinion, the Chairperson of the NCLAT referred the

¹For short, 'the NCLAT'

²For short, 'the NCLT'

matter to another Member (Technical). By judgment dated 31.05.2024, the third Member agreed with the view taken by the Member (Judicial) and, in consequence, the appeals stood dismissed.

2. Aggrieved by the dismissal of its appeals, M/s. Shri Karshni Alloys Private Limited filed the present appeals under Section 62 of the Insolvency and Bankruptcy Code, 2016³. The respondent in the appeals, viz., Ramakrishnan Sadasivan is the liquidator of M/s. Surana Industries Limited.

3. The corporate insolvency resolution process against M/s. Surana Industries Limited was initiated on 02.01.2018 but its liquidation commenced pursuant to the order dated 12.10.2018 passed by the Adjudicating Authority. The respondent was thereupon appointed as the liquidator. The company under liquidation owned assets/plants at Gummidipoondi in the State of Tamil Nadu and Raichur in the State of Karnataka. Between 06.01.2019 and 02.02.2021, six auctions were held by the liquidator for the sale of these assets/plants. However, only the assets/plant at Gummidipoondi were sold. As regards the assets/plant at Raichur, altogether thirteen auctions were conducted unsuccessfully by the liquidator till 30.06.2021. It was then decided that the said assets/plant should be sold at the scrap value of approximately ₹50 crores and the same was approved by the Stakeholders Consultation Committee⁴ at its meeting held on 31.07.2021.

4. While so, on 09.09.2021, the appellant made an offer of ₹105.21 crores to the liquidator to purchase the assets/plant at Raichur as a going concern. This proposal was placed before the SCC at its meeting held on 15.09.2021 and they consented to the sale. The appellant's proposal envisaged that the appellant and its associates would invest ₹40 crores by way of equity infusion and the balance ₹65.21 crores would be brought in through unsecured debts. The appellant deposited 10% of the sale consideration, i.e., ₹10.5210 crores, as a commitment advance. Pursuant thereto, on 22.09.2021, the liquidator filed an application, viz., IA No. 997/CHE/2021 in TCP/95/IB/2017, before the NCLT seeking its approval for the private sale of the assets/plant at Raichur to the appellant. The NCLT allowed the application on 22.03.2022 and directed the appellant to pay the sale consideration within 15 days from the date of receipt of the said order. The application was filed by the liquidator on 22.09.2021 but the same was allowed by the NCLT only on 22.03.2022.

5. The appellant claims that owing to this efflux of time and the changes in the market scenario, it had difficulty in making the payment within the time stipulated. On 13.04.2022, a meeting of the SCC was held and it was decided to extend the timeline till 30.05.2022 to enable the appellant to make the payment. This extension was stated to be a measure of prudence, factoring in unforeseen circumstances. The stakeholders were unwilling to extend the time till 28.06.2022 as sought by the appellant, opining that a three-month extension may result in cancellation of the proposal.

6. Thereupon, the appellant filed IA No. (IBC)/512(CHE)/2022 in IA No. 997/CHE/2021 in TCP/95/IB/2017 before the NCLT, seeking extension of time till 31.05.2022 to make the balance payment. By order dated 29.06.2022, the NCLT noted that the appellant had paid ₹36.30 crores till that date, as was admitted by the liquidator, and granted extension of time. The appellant was directed to pay 50% of the balance sale consideration, i.e., ₹34.60 crores, with 12% interest thereon from 15.04.2022 till the date of payment, on or before 30.06.2022; and the remaining 50%, i.e., ₹34.60 crores, with 12% interest thereon from

³For short, 'the IBC'

⁴For short, 'the SCC'

15.04.2022 till the date of payment, on or before 31.07.2022. The NCLT categorically recorded that the appellant should strictly comply with these timelines and any deviation from the same would result in forfeiture of the entire amount paid by the appellant.

7. Admittedly, the appellant failed to abide by the extended timelines. It, however, paid a further sum of ₹1.50 crores, thereby bringing the total amount paid by it to ₹37.80 crores. At the SCC's meeting held on 01.08.2022, the stakeholders decided to enforce forfeiture of the entire payment made by the appellant, as per the NCLT's order, and that the liquidator should issue a fresh auction notice to dispose of the assets/plant at Raichur. By letter dated 02.08.2022, the liquidator informed the appellant that, as the payment had not been made by it as directed by the NCLT, the entire amount of ₹37.80 crores paid by it stood forfeited, in adherence to the order dated 29.06.2022 passed by the NCLT. The appellant, thereupon, filed IA No. 952 of 2022 in TCP/95/2017 assailing the liquidator's letter dated 02.08.2022, whereby the sum of ₹37.80 crores paid by it stood forfeited. It also sought further extension of time to pay the balance sale consideration with waiver of interest. However, by order dated 10.08.2022, the NCLT dismissed the application. The NCLT noted therein that the liquidator had issued the letter dated 02.08.2022 based on its earlier order dated 29.06.2022 and if the appellant had been aggrieved thereby, it ought to have challenged the same but had not done so. The NCLT, therefore, opined that merely challenging the liquidator's letter dated 02.08.2022 would not suffice as, once there was non-payment of the sum as directed by it, the forfeiture became automatic.

8. The liquidator published a fresh e-auction sale notice in relation to the Raichur assets/plant on 12.08.2022. On 13.08.2022, the appellant filed Company Appeal (AT)(CH)(Ins) No. 443 of 2022 before the NCLAT challenging the earlier order dated 29.06.2022 passed by the NCLT. Thereafter, on 31.08.2022, the appellant filed Company Appeal (AT)(CH) (Ins) No. 438 of 2022 against the later order dated 10.08.2022. Having filed the said appeals, the appellant chose to file a writ petition before the High Court of Madras, viz., Writ Petition No. 24262 of 2022. Therein, it sought a writ of certiorarified mandamus to call for the records of the NCLT's order dated 29.06.2022 and to quash the same along with the subsequent actions taken by the liquidator. It also sought extension of time to enable it to make the balance payment and conclude the sale or, in the alternative, to direct the liquidator to refund the entire amount paid by it along with interest.

9. Before the High Court, it was contended by the learned senior counsel who appeared for the appellant that it could not file an appeal before the NCLAT in relation to the order dated 29.06.2022, impugned in the Writ Petition, owing to the limitation prescribed under the IBC. Having noted this submission in the order, the High Court observed that the appellant had not exhausted the statutory remedy of preferring an appeal, though it had the opportunity and time to do so. It was noted that, after the dismissal of its extension application on 10.08.2022, the appellant still had four days' time to file an appeal against the order dated 29.06.2022, but without doing so, the appellant had chosen to file a writ petition on 05.09.2022. Holding that there were several factual disputes which could not be adjudicated under Article 226 of the Constitution of India, the High Court dismissed the writ petition as not maintainable, *vide* order dated 24.11.2022.

10. Significantly, the appellant did file an appeal against the order dated 29.06.2022 before the NCLAT on 13.08.2022 but did not disclose the same in its writ petition filed on 05.09.2022. This is clear not only from its senior counsel's statement but also from para 14 of the order, wherein the High Court noted that the appellant filed an appeal against the order dated 10.08.2023 passed by the NCLT relating to the same issue and left all contentions available to the appellant to be raised in the said appeal.

11. As noted earlier, the Member (Judicial) of the NCLAT, by his judgment dated 20.10.2023, dismissed both the appeals filed by the appellant while, by her separate judgment of the same date, the Member (Technical) partly allowed the appeals holding that, out of the forfeited amount of ₹37.80 crores only 10%, i.e., ₹10.5210 crores, was liable to be forfeited, as per Clause 9 of the appellant's offer, and directed the balance amount to be refunded. In the light of this split verdict, the matter was referred to the third Member, i.e., a Member (Technical), and he agreed with the view taken by the Member (Judicial), by way of his judgment dated 31.05.2024. In effect, the appeals filed by the appellant stood dismissed in their entirety, as per the majority opinion. The appellant is before us challenging the two majority opinions.

12. Perusal of the two opinions under appeal reflects that the majority were of the view that the sale in favour of the appellant was under Regulation 33(2)(d) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016⁵. The contention of the appellant that the sale was under Regulation 33(2)(c) of the Liquidation Regulations, which provides for private sale of the assets of the corporate debtor by the liquidator when the asset is sold at a price higher than the reserve price of a failed auction, was rejected. The consequential argument of the appellant that its sale transaction was, in effect, a contract governed by the provisions of the Indian Contract Act, 1872, was also rejected. Reference was made to Rule 15 of the National Company Law Tribunal Rules, 2016⁶, which empowers the NCLT to extend time upon such terms, if any, as the justice of the case may require, and it was opined that as the forfeiture clause in the order dated 29.06.2022 was to come into effect only if the appellant failed to make the payment by 31.07.2022, the condition was rational as the intent was to resolve the liquidation process expeditiously. It was held that this stipulation was well within the power of the NCLT under Rule 15 of the NCLT Rules.

13. We must also note that the liquidation value of the assets/plant at Raichur was assessed thrice. In December, 2018, it was assessed at ₹338.01 crores; in August, 2019, it fell to ₹227.31 crores; and in August, 2020, it fell further to ₹117.23 crores. However, pursuant to the liquidator's efforts to sell the assets/plant, after the appellant's failure to make the payment, the same was sold to M/s. Texcon Steels Limited for ₹145.38 crores on 30.08.2022. In that context, the appellant contended before the NCLAT that, as the resale value was far higher than the amount offered by it, i.e., ₹105.21 crores, there was no actual loss suffered by the stakeholders. Dealing with this argument, the majority observed that the outstanding dues of the financial creditors were never fully recovered and they had to suffer a major haircut even if the assets/plant at Raichur were eventually sold at a value higher than that offered by the appellant. The majority also took note of the crucial fact that the appellant had accepted and acted upon the order dated 29.06.2022 by making two more payments, amounting to ₹1.50 crores on 13.07.2022 (₹0.50 crore) and on 25.07.2022 (₹1.00 crore). Given the aforesaid facts, the majority opined that the appellant could not approbate and reprobate in relation to the order dated 29.06.2022, that is, by acting upon it, on the one hand, and assailing it, on the other. They, therefore, held against the appellant and dismissed its appeals against the NCLT's orders dated 29.06.2022 and 10.08.2022.

14. The learned senior counsel appearing for the appellant would contend that, as the stakeholders did not suffer any loss in the long run as the assets/plant at Raichur were sold for a much higher price than that offered by the appellant, forfeiture of the amounts

⁵ For short, 'the Liquidation Regulations'

⁶ For short, 'the NCLT Rules'

paid by the appellant was not just and lawful. Reliance was sought to be placed on case law pertaining to Section 74 of the Indian Contract Act, 1872, apropos compensation payable for breach of contract. On the other hand, the learned counsel appearing for the liquidator would argue that extension of time was granted by the NCLT in exercise of power under Rule 15 of the NCLT Rules, which was duly acted upon by the appellant by making a further payment of ₹1.50 crores, and having done so, the appellant could not seek to assail the condition included therein as regards forfeiture. The learned counsel would, therefore, contend that this is not a case of penalty or unjust enrichment falling under Section 74 of the Indian Contract Act, 1872, and that the judgments relied upon by the other side have no relevance. He would point out that the appellant filed its appeal against the order dated 29.06.2022 before the NCLAT on 13.08.2022, but deliberately kept the same defective till 28.12.2022, and having done so, the appellant chose to file the writ petition on 05.09.2022 and it was stated before the High Court by the learned senior counsel appearing for the appellant that the time for filing an appeal against the NCLT's order dated 29.06.2022 had already expired. He also pointed out that the appellant, by resorting to this subterfuge, secured an interim order on 29.09.2022, which continued to operate till the dismissal of the writ petition and even by the said date, the appellant did not inform the High Court that it had filed an appeal against the NCLT's order dated 29.06.2022. The learned counsel stated that after dismissal of the writ petition, the liquidator distributed the forfeited amount amongst the stakeholders as per law and there is, therefore, no cause to turn back the clock at this stage when the appellant was wholly disentitled from claiming any relief.

15. Having given our earnest consideration to the matter, we must stress upon certain critical facts. The last auction in relation to the assets/plant at Raichur was held on 28.07.2021 with a reserve price of ₹105 crores. However, no bids were forthcoming on that date. Thereupon, the SCC held a meeting on 31.07.2021 and decided to sell the said assets/plant at the scrap value of approximately ₹50 crores. The auction process, therefore, stood concluded in its entirety, having culminated in failure, and the later decision of the stakeholders to resort to a scrap sale was in place on the date the appellant made its offer on 09.09.2021, proposing to buy the assets/plant at Raichur as a going concern. Perusal of the said proposal demonstrates that the appellant made a commitment that, after deducting its initial deposit of ₹10.5210 crores made along with its offer as a commitment advance, the balance payable out of the offered ₹105.21 crores would be deposited within 15 days from the date of receipt of the approval of the sale by the competent authority, i.e., the NCLT. This offer was considered by the stakeholders in their 9th meeting held on 15.09.2021. All 15 secured financial creditors/ stakeholders were present online and upon being informed of the proposal made by the appellant, including its commitment to pay the balance amount after deduction of the commitment advance of ₹10.5210 crores within 15 days from the date of approval of the sale by the NCLT, the stakeholders asked the liquidator to take the process forward in keeping with the IBC.

16. Pursuant thereto, the liquidator filed IA No. 997/CHE/2021 in TCP/95/IB/2017 seeking approval of the NCLT for the sale in favour of the appellant. It is, therefore, clear that this sale did not fall within the ambit of Regulation 33(2)(c) of the Liquidation Regulations but was squarely covered by Regulation 33(2)(d) thereof. Regulation 33(2), to the extent relevant, reads as follows:

‘(2) The liquidator may sell the assets of the corporate debtor by means of private sale in the manner specified in Schedule I when-

(a) the asset is perishable;

- (b) the asset is likely to deteriorate in value significantly if not sold immediately;
- (c) the asset is sold at a price higher than the reserve price of a failed auction; or
- (d) the prior permission of the Adjudicating Authority has been obtained for such sale.'

Once the stakeholders directed the liquidator to take the process forward in accordance with the IBC and the liquidator filed an IA seeking approval of the NCLT for the sale, there is no possibility of the appellant trying to bring the sale within the ambit of Regulation 33(2)(c). Be it noted that the auction process failed in July, 2021, itself and was thereafter followed by the decision of the stakeholders to resort to a scrap sale and the question of the assets/plant being sold at a price higher than the reserve price of the failed auction was not available thereafter. It was thus a private sale that required prior permission of the NCLT and the liquidator, accordingly, resorted to that procedure. By order dated 22.03.2022, the NCLT accepted the proposal put forth by the appellant and directed it to pay the sale consideration within 15 days from the date of receipt of its order, as proposed by the appellant itself. Contrary to its own commitment in the offer made on 09.09.2021, the appellant then sought extension of time beyond the stipulated 15 days.

17. The stakeholders showed lenience in that regard in their 10th meeting held on 13.04.2022 and agreed to extend the time till 30.05.2022, subject to the condition that the appellant would pay interest at 12% per annum on the payments made post 15.04.2022. The appellant was asked to submit an application before the NCLT seeking approval of the proposed revision in the timeline for making the payment. Pursuant thereto, the appellant filed IA No. (IBC)/512/CHE/2022 before the NCLT seeking extension of time till 31.05.2022. This application was filed on 25.04.2022. It is on this application that order dated 29.06.2022 was passed by the NCLT, stating as follows:

- '(i) The Applicant is directed to pay on or before 30.06.2022 the balance 50% of the sale consideration i.e., 34.60 Crore with 12% interest from 15.04.2022 till the date of payment.
- (ii) The remaining sum of Rs. 34.60 Crore shall be paid on or before 31.07.2022 with 12% interest from 15.04.2022 till the date of payment. (iii) The Applicant is directed to strictly comply with the said timelines. Any deviation from the same would amount to forfeiture of the entire amount paid by the Applicant.'

18. We may note that the appellant itself had asked for extension of time till 31.05.2022 in its prayer in the aforesaid IA and as the order was being passed on 29.06.2022, the NCLT seems to have acted upon the appellant's own suggested time frame and directed it to pay ₹34.60 crores with 12% interest from 15.04.2022 by 30.06.2022, i.e., the very next day. As the appellant had approached the NCLT for extension of time two months earlier, stipulating that it required time till 31.05.2022, the NCLT would have obviously expected that the appellant would have arranged for the funds to be paid in terms of the extended timeline prayed for by the appellant itself. Therefore, when the NCLT granted just one day's time to the appellant to pay 50% of the balance amount due, it was justified in doing so and the appellant cannot make much of the fact that it was required to pay that amount by the very next day. Further, as the appellant had already backtracked on the commitment in its offer made on 09.09.2021 with regard to paying the entire amount within 15 days from the date of approval by the NCLT, i.e., from 22.03.2022, and the appellant was being given an extended timeline to make the payment at least by 31.07.2022, i.e., nearly 4 months later, the NCLT was fully justified in adding the forfeiture clause that if the appellant deviated from the timelines as set out in the order dated 29.06.2022, the entire amount paid by it was liable to be forfeited. As rightly noted in the clinching judgment dated 31.05.2024, the NCLT was exercising power under Rule 15 of the NCLT Rules and was, therefore, at liberty to stipulate such terms as the justice of the case required. As pointed

out by this Court in ***Kridhan Infrastructure Private Limited vs. Venkatesan Sankaranarayan and others***⁷, time is a crucial facet of the scheme under the IBC and to allow such proceedings to lapse into indefinite delay would plainly defeat the very object of the statute.

19. Further, the conduct of the appellant during the course of the proceedings also disentitled it from seeking relief. The clandestine act of filing a writ petition before the High Court, suppressing the fact that it had already filed an appeal before the NCLAT against the order dated 29.06.2022, and attempting to challenge the very same order under Article 226 of the Constitution, clearly reflected on its lack of *bonafides*. Such abuse of process warranted non-suiting of the appellant on that ground itself. Even on merits, we find that the appellant had no justifiable claim to seek refund of the amounts paid by it, which stood forfeited in keeping with the order passed by the NCLT. This was not a case of a contract between the appellant and the liquidator/stakeholders, whereby the appellant could seek to fall back on Section 74 of the Indian Contract Act, 1872. The sale in question was purely under the supervision of the Adjudicating Authority, i.e., the NCLT, and the forfeiture condition stipulated by the NCLT while granting extension of time cannot be equated with a forfeiture clause in a contract. Having made an offer, coupled with a temporal commitment, which was duly accepted by the NCLT, *vide* its order dated 22.03.2022, the appellant went before the NCLT and sought extension of time. That extension was granted, saddled with the condition of forfeiture in the event of failure, and was duly accepted and acted upon by the appellant, as already noted *supra*. The appellant actually made payments to the tune of ₹1.50 crores after the passing of the extension order dated 29.06.2022 but failed to make the full payment by 31.07.2022. The appellant cannot, therefore, seek to approbate and reprobate at this stage by assailing the forfeiture clause in the said order, having accepted and acted upon the extension granted thereunder.

20. On the above analysis, be it viewed from any angle, we find no merit in the contentions advanced on behalf of the appellant. The appeals are, therefore, bereft of merit, be it on facts or in law. No grounds are made out to interfere with the majority opinions of the Member (Judicial) and the Member (Technical) of the National Company Law Appellate Tribunal, Chennai Bench, holding against the appellant and dismissing its appeals.

The appeals are, accordingly, dismissed.

Parties shall bear their respective costs.

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