

## 2022 Scej 844

NATIONAL COMPANY LAW APPELLATE  
TRIBUNAL, PRINCIPAL BENCH, NEW  
DELHI

[Justice Ashok Bhushan], Chairperson,  
[Justice M. Satyanarayana Murthy].  
Member (Judicial), [Barun Mitra] Mem-  
ber (Technical)

**Krishan Kumar Basia - Appellant**

**versus**

**State Bank of India - Respondent**

14th July, 2022

Company Appeal (AT) (Insolvency) No  
721, 722, 724 of 2022

(Arising out of Order dated 06.06.2022  
passed by the Adjudicating Authority  
(National Company Law Tribunal), New  
Delhi, Special Bench (Court-II), in  
(IB)111(ND)/2022)

**(i) Insolvency and Bankruptcy Code, 2016, Section 95, 96 - Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019, Rule 10, Rule 2(14) - Filing - Date of submission is the date of filing - Even if there is any defect in the Application, which is subsequently cured, the date of presentation of the Application shall remain the same and shall not be dependent on the date when defects are cured - Filing of the Application is on a date when Application was filed and allotted number electronically and the submission that date of filing of the Application shall be the date when Application is numbered has rightly been rejected - Rule 10, sub-rule (2) of 2019 Rules, which provides for filing in electronic form, clearly indicates that when Application is registered in the electronic form, the filing is complete, which is not dependent on any further scrutiny in the Registry.**

**(ii) Filing and objections- E-filing - When as per Rule 10, sub-rule (2), when an elec- a  
tronic facility is available and an Applica-  
tion is filed in electronic form, the filing is  
complete as soon as it is registered elec-  
tronically - Numbering of an Application b  
by Registry is a process, which is undertaken  
by the Registry as per the relevant  
rules and instructions - Several conse-  
quences ensue on filing of the Application c  
in the Registry, if it is accepted that the fil-  
ing shall be dependent on numbering of  
the Application by the Registry - It will  
lead to uncertainty regarding date of filing e  
- When statutory consequences are pro-  
vided, there has to be certainty regarding  
such consequences - We cannot accept  
any interpretation, which may lead to un- f  
certainty regarding the date of filing, re-  
sulting in uncertainty, regarding enforce-  
ment of the Interim Moratorium - Interim  
Moratorium has serious consequences, g  
which consequences flow immediately af-  
ter filing of the Application - If we accept  
the submission of the Appellant that filing h  
is postponed till it is numbered, it will  
lead to uncertainty and allow the Guarantors  
and other Respondents to delay the  
moratorium by pleading that filing is not  
complete, since the Application has not i  
yet numbered - The statutory scheme,  
thus, does not in any manner support the  
submission of learned Counsel for the Ap- j  
pellant - Numbering of Application is es-  
sential for different purpose and cannot  
be equated with the filing as contem- k  
plated by the Rules - Insolvency and Bank-  
ruptcy Code, 2016, Section 95, 96 - Insol-  
vency and Bankruptcy (Application to Ad-  
judicating Authority for Insolvency Resolu-  
tion Process for Personal Guarantors to  
Corporate Debtors) Rules, 2019, Rule 10,  
Rule 2(14) .**

Facts: It was submitted that although Ap- m  
plication by the State Bank of India was  
presented in the Registry on 01.10.2021  
and the Application under Section 94  
was filed by the Personal Guarantor on

25.10.2021, but the Application of the Guarantor was numbered on 22.12.2021, that is prior to numbering of Application of State Bank of India, which could be done only on 18.02.2022. Hence, the Application under Section 94 being prior in time the Moratorium shall kick in.

When we read Rule 2 (14) along with Rule 23 of NCLT Rules, it is clear that Application is treated to be filed when it is filed in the Office of the Registry at the filing counter. Thus, filing on behalf of the Appellant/ Applicant is complete as soon as the Application is presented at the filing counter of the Office of the Registry. What is required to be done by the Applicant by filing an Application is provided in Rules 22 to 24 and 26, which the Applicant has to comply with while submitting the Application. The submission, which has been pressed by the learned Counsel for the Appellant is that the Application cannot be held to be filed unless it is numbered by the Registry, that is, only when the Application is found defect free and accorded a numbering by the Registry. Thus, a filing within the meaning of 2019 Rules read with NCLT Rules, is the filing at the filing counter or the filing is to be treated to be filing only when it is numbered by the Office of the Registry, is a question to be answered. [Para 15]

For Appellant(s): Mr. Rishi Kapoor, Mr. Akhil Shankhwar and Mr. Satish Rai, Advocates.

For Respondent: Mr. Abhishek Anand and Mr. Mohak Sharma, Advocates.

### **JUDGMENT**

**ASHOK BHUSHAN, J.**

These three Appeal(s) have

been filed against the order of the same date, that is, 06.06.2022 passed by National Company Law Tribunal, Special Bench (Court-II), by which the Adjudicating Authority in three different Applications filed under Section 95 of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "IBC") appointed Resolution Professional to submit a Report in exercise of powers conferred under Section 99 of the IBC. The Adjudicating Authority further directed that the Application be listed on 14<sup>th</sup> July, 2022 for further consideration. The orders impugned in these three Appeal(s) are almost on the same facts and circumstances, raising similar issues, hence, all these Appeal(s) have been heard together and are being decided by this common judgment.

2. It shall be sufficient to notice the facts in Company Appeal (AT) (Insolvency) No. 721 of 2022 for deciding all these three Appeal(s).

3. The State Bank of India filed an Application under Section 95, sub-section (1) on 01.10.2021 before the Adjudicating Authority, which Application came to be subsequently numbered as Case No. CP-IB 111 of 2022. The Appellant Krishan Kumar Basia, the Guarantor of M/s. Gee Ispat Private Limited, Corporate Debtor also filed an Application under Section 94 on 25.10.2021, which was registered as CP-IB 788/2021. The Application under Section 95 by State Bank of India was filed earlier in point of time, but the Application filed by Personal Guarantor was registered earlier in point of time. In the Application, Guarantor had filed an affidavit submitting the facts, to which a counter affidavit was also filed. Both the parties have filed written submissions before the Adjudicating Authority. The Guarantor submitted that Application under Section 94, which was filed on 25.10.2021 was registered first in point of time, as compared to the Application filed under Section 95. It is submitted that any petition, which is presented to the

Registry and contain defects, is a petition, which cannot be said to be filed on the day when it is presented.

The procedure for filing of a petition and numbering is provided under Rules, i.e. as per terms of the Rule 10 of Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 (hereinafter referred to as the “2019 Rules”). It is submitted that every application has to be filed in the manner as provided in the Rules. It is submitted that the Application of State Bank of India, which was numbered on 18.02.2022, is subsequent to the numbering of Section 94 petition filed by the Guarantor, that is, on 22.12.2021. Hence, the petition under Section 94 filed by the Personal Guarantor is early in point of time and from which date the Moratorium under Section 96 shall kick in, prohibiting consideration of any Application by State Bank of India under Section 95.

4. The Adjudicating Authority considered the objections raised by the Guarantor and also heard the submissions of the Appellant, who is Applicant in Section 94 Application and by the impugned order, rejected the objection of the Respondent and held that Application under Section 95 filed by the State Bank of India on 01.10.2021 is earlier in time, hence appointed Resolution Professional for submitting a Report. Aggrieved by the order impugned dated 06.06.2022 passed by the Adjudicating Authority, the Guarantor, who is Respondent in Application under Section 95 has come up in this Appeal.

5. We have heard Shri Rishi Kapoor, learned Counsel for the Appellant and Shri Abhishek Anand, learned Counsel for the Respondent.

6. The learned Counsel for the Appellant submits that mere presenting of the Application in the Registry of the Tribunal is not akin to filing of the Application. It is

submitted that Rule 10 of 2019 Rules itself lays down a procedure for filing an Application and Rules 20-24 and 26 of Part-III of NCLT Rules, 2016 (hereinafter referred to as the “NCLT Rules”) are made applicable. The Rules provided procedure for presenting an Application and unless the Application is filed in accordance with the Rules, the Application cannot be treated to be filed and it is only when the Application is scrutinized and numbered by the Registry, the same shall be treated to have been filed. It is submitted that although Application by the State Bank of India was presented in the Registry on 01.10.2021 and the Application under Section 94 was filed by the Personal Guarantor on 25.10.2021, but the Application of the Guarantor was numbered on 22.12.2021, that is prior to numbering of Application of State Bank of India, which could be done only on 18.02.2022. Hence, the Application under Section 94 being prior in time the Moratorium shall kick in. It is submitted that Adjudicating Authority committed error in holding that Application of State Bank of India was filed on 01.10.2021.

7. The learned Counsel for the Respondent refuting the submissions of learned Counsel for the Appellant submits that Rule 2, sub-Rule 14 of NCLT Rules itself provide that “filed” means filed in the office of the Registry of the Tribunal, hence, when the Application is filed in the Office of the Registry of the Tribunal, it is filed within the meaning of Rules and the submission of learned Counsel for the Appellant that Application can be treated to be filed only when it is numbered is without any basis and is contrary to the Scheme under the statutory Rules. It is submitted that Application under Section 95(1) filed by the State Bank of India on 01.10.2021, whereas Application under Section 94 was filed by the Guarantor on 25.10.2021. The learned Counsel for the Respondent submits that accepting the interpretation put by the Appellant on the concept of filing will lead to uncertainty and impracticability. The filing is well-known concept and

the same cannot be held to be dependent on numbering by the Registry of the Tribunal.

8. We have considered the submissions of learned Counsel for the parties and have perused the record.

9. From the facts brought on the record, following is relevant dates with regard to case of both the parties:

Party name and Section	Date of filing in the Registry	Date of numbering by Registry
Application under Section 95 by State Bank of India	01.10.2021	18.02.2022
Application under Section 94 filed by Personal Guarantor	25.10.2021	22.12.2021

10. Rule 10 of Insolvency and Bankruptcy (Application to Adjudicating authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 provides for filing of application and documents provides as follows:

**“10. Filing of application and documents.—** (1) *Till such time, rules of procedure for conduct of proceedings under the Code are notified, the applications under rules 6 and 7 shall be filed and dealt with by the Adjudicating Authority in accordance with —*

(a) *rules 20, 21, 22, 23, 24 and 26 of Part III*

*of the National Company Law Tribunal Rules, 2016 made under section 469 of the Companies Act, 2013 (18 of 2013); or*

(b) *rule 3 of the Debt Recovery Tribunal (Procedure) Rules, 1993 made under section 36 of the Recovery of Debts and Bankruptcy Act, 1993 (51 of 1993) and regulations 3, 4, 5 and 11 of the Debt Recovery Tribunal Regulations, 2015 made under section 22 of the Recovery of Debts and Bankruptcy Act, 1993, as the case may be.*

(2) *The application and accompanying documents shall be filed in electronic form, as and when such facility is made available and as directed by the Adjudicating Authority:*

*Provided that till such facility is made available, the applicant may submit accompanying documents, and wherever they are bulky, in electronic form, in scanned, legible portable document format in a data storage device such as compact disc or a USB flash drive acceptable to the Adjudicating Authority.”*

11. The above Rule makes it clear that procedure for filing of Application by Guarantor or Creditor under Rules 6 and 7 of 2019 Rules, is the same. As per Rule 10, sub-rules (a) & (b), Rules 20 to 24 and 26 of

Part-III of NCLT Rules, which are made applicable.

12. Now we revert to Rule 20 to 24. Rule 20 deals with the "procedure", which is to the following effect:

**"20. Procedure.-(1)**

*Every appeal or petition or application or caveat petition or objection or counter presented to the Tribunal shall be in English and in case it is in some other Indian language, it shall be accompanied by a copy translated in English and shall be fairly and legibly type written, lithographed or printed in double spacing on one side of standard petition paper with an inner margin of about four centimeter width on top and with a right margin of 2.5. cm, and left margin of 5 cm, duly paginated, indexed and stitched together in paper book form;*

*(2) The cause title shall state "Before the National Company Law Tribunal" and shall specify the Bench to which it is presented and also set out the proceedings or order of the authority against which it is preferred.*

*(3) Appeal or petition or application or counter or objections shall be divided into paragraphs and shall be numbered consecutively and each paragraph shall contain as nearly as may be, a separate fact or allegation or point.*

*(4) Where Saka or other dates are used, cor-*

*responding dates of Gregorian Calendar shall also be given.*

*(5) Full name, parentage, age, description of each party and address and in case a party sues or being sued in a representative character, shall also be set out at the beginning of the appeal or petition or application and need not be repeated in the subsequent proceedings in the same appeal or petition or application.*

*(6) The names of parties shall be numbered consecutively and a separate line should be allotted to the name and description of each party.*

*(7) These numbers shall not be changed and in the event of the death of a party during the pendency of the appeal or petition or matter, his legal heirs or representative, as the case may be, if more than one shall be shown by sub-numbers.*

*(8) Where fresh parties are brought in, they may be numbered consecutively in the particular category, in which they are brought in.*

*(9) Every proceeding shall state immediately after the cause title the provision of law under which it is preferred."*

Rule 21 provides for 'particulars to be set out in the address for service'; Rule 22 provides for 'initialling alteration'; and

Rule 23 deals with 'Presentation of petition or appeal', which is to the following effect:

**"23. Presentation of petition or appeal.-** (1)

Every petition, application, caveat, interlocutory application, documents and appeal shall be presented in triplicate by the appellant or applicant or petitioner or respondent, as the case may be, in person or by his duly authorised representative or by an advocate duly appointed in this behalf in the prescribed form with stipulated fee at the filing counter and non-compliance of this may constitute a valid ground to refuse to entertain the same.

(2) Every petition or application or appeal may be accompanied by documents duly certified by the authorised representative or advocate filing the petition or application or appeal duly verified from the originals.

(3) All the documents filed in the Tribunal shall be accompanied by an index in triplicate containing their details and the amount of fee paid thereon.

(4) Sufficient number of copies of the appeal or petition or application shall also be filed for service on the opposite party as prescribed under these rules.

(5) In the pending matters, all applications shall be presented after serving copies thereof in advance

on the opposite side or his authorised representative.

(6) The processing fee prescribed by these rules, with required number of envelopes of sufficient size and notice forms shall be filled alongwith memorandum of appeal."

Rule 23, sub-rule (1) provides that every application etc. be presented in triplicate by the appellant in the prescribed form with stipulated fee **at the filing counter**.

13. Section 96 of the Code uses the expression – "when an application is filed under Section 94 and 95". What is the meaning of filing an Application under Section 94 and 95 is the question to be answered in these Appeal(s). Rule 2, sub-rule (14) of the NCLT Rules itself defines the word 'filed', which is to the following effect:

**"(14) "filed" means filed in the office of the Registry of the Tribunal;"**

14. When we read Rule 2 (14) along with Rule 23 of NCLT Rules, it is clear that Application is treated to be filed when it is filed in the Office of the Registry at the filing counter. Thus, filing on behalf of the Appellant/ Applicant is complete as soon as the Application is presented at the filing counter of the Office of the Registry. What is required to be done by the Applicant by filing an Application is provided in Rules 22 to 24 and 26, which the Applicant has to comply with while submitting the Application. The submission, which has been pressed by the learned Counsel for the Appellant is that the Application cannot be held to be filed unless it is numbered by the Registry, that is, only when the Application is found defect free and accorded a numbering by the Registry. Thus, a filing within the meaning of 2019 Rules read

with NCLT Rules, is the filing at the filing counter or the filing is to be treated to be filing only when it is numbered by the Office of the Registry, is a question to be answered.

15. The learned Counsel for the Appellant submits that the Application is to be considered as 'filed' only when it complies with NCLT Rules 22 to 24 and 26 and an Application which is presented to the Registry and not complied with the aforesaid provisions is marked 'defective' cannot be treated to have been filed. Any petition, which is marked defective is evidence of it not being 'filed' and it may be considered to be filed only when it becomes defect free and numbered. Hence, whether petition is filed or not is determined by the numbering of the petition, as otherwise, it is defective and cannot be treated as filed. The act of numbering of the petition is the sole evidence to show and determine that petition is filed in terms of the Rules. Thus, filing under Section 96 means filing not merely a bunch of papers, but an act of filing as provided under Rule 10 of the 2019 Rules. The learned Counsel, thus, submits that since the petition of Appellant under Section 94 was numbered earlier in point of time, the State Bank of India's petition, which was numbered subsequently is to be treated as *non-est* and could not have been considered by the Adjudicating Authority. The learned Counsel for the Appellant in support of his submission has relied on judgment of this Tribunal in **Ravi Ajit Kulkarni v. State Bank of India in Company Appeal (AT) (Ins.) No.316 of 2021** decided on 12<sup>th</sup> August, 2021.

16. The expression 'filing' is defined in several statutes. We may first notice the dictionary meaning of filing. In **P Ramana-tha Aiyar – Advanced Law lexicon (6<sup>th</sup> Edition Vol. 2, D-1)** defines the 'filing' as follows:

*"Filing. Delivery of a paper to the proper officer*

*to be kept on file; placing and leaving a paper among the files; placing a paper in the proper official custody; presenting a paper at the proper office and leaving it there, deposited with the papers in such office; placing a paper in the proper official's custody by the party charged with this duty, and the making of the proper indorsement by the officer."*

17. The expression 'filing' has been used in NCLT Rules; IBC, as well as 2019 Rules as noted above. Rule 10 deals with filing of application and documents. Rule 10, in turn refers to Rule 20 to 24 and 26 of NCLT Rules. Rule 10, sub-rule (2) further provides that Application and accompanying documents shall be filed in electronic form, as and when such facility is made available. In the facts of the present case, it is clear that electronic facility is available in the NCLT, Principal Bench, New Delhi, where Applications have been filed in electronic form. The Adjudicating Authority has itself in the impugned order noticed the filing in paragraph 11 and 12, which indicate that Application under Section 95, subsection (1) was efiled on 01.10.2021 before the NCLT, on which date filing number was given. It is relevant to note paragraph 12 of the impugned judgment, which is to the following effect:

*"12. On conjoint reading of these two documents show that date of filing of application by the SBI against Krishan Kumar Basai is 01/10/2021 and filing number if 07101020/7186/2021, where as filing number of respondent is 07101020/7885/2021. Admittedly, the date of*

*application filed by the Applicant is prior to the date of filing of the application by the Respondent under Section 95 of the IBC, 2016. Of course, the application filed on behalf of the Applicant was not listed earlier, rather it was listed after the listing of the application filed by the Respondent.”*

18. When as per Rule 10, sub-rule (2), when an electronic facility is available and an Application is filed in electronic form, the filing is complete as soon as it is registered electronically, we do not find any support from the statutory scheme to the submission of learned Counsel for the Appellant that petition would be treated as filed when it is numbered by the Registry. Numbering of an Application by Registry is a process, which is undertaken by the Registry as per the relevant rules and instructions. Several consequences ensue on filing of the Application in the Registry, if it is accepted that the filing shall be dependent on numbering of the Application by the Registry. It will lead to uncertainty regarding date of filing. When statutory consequences are provided, there has to be certainty regarding such consequences. We cannot accept any interpretation, which may lead to uncertainty regarding the date of filing, resulting in uncertainty, regarding enforcement of the Interim Moratorium. Interim Moratorium has serious consequences, which consequences flow immediately after filing of the Application. If we accept the submission of the Appellant that filing is postponed till it is numbered, it will lead to uncertainty and allow the Guarantors and other Respondents to delay the moratorium by pleading that filing is not complete, since the Application has not yet numbered. The statutory scheme, thus, does not in any manner support the submission of learned Counsel for the Appellant. Numbering of Application is essen-

tial for different purpose and cannot be equated with the filing as contemplated by the Rules.

19. We may also refer to the judgment of Hon'ble Supreme Court in ***Surendra Trading Company vs. Juggilal Kamalapat Jute Mills Company Ltd. and Ors. – (2017) 16 SCC 143***, which was a case where Hon'ble Supreme Court had occasion to consider various provisions of the Code. Hon'ble Supreme Court noticed the various stages as indicated from the provisions of the Code. Paragraph 23 and 23.1, which is relevant, is to the following effect:

*“23. Various provisions of the Code would indicate that there are three stages:*

*23.1. First stage is the filing of the application. When the application is filed, the Registry of the adjudicating authority is supposed to scrutinise the same to find out as to whether it is complete in all respects or there are certain defects. If it is complete, the same shall be posted for preliminary hearing before the adjudicating authority. If there are defects, the applicant would be notified about those defects so that these are removed. For this purpose, seven days' time is given. Once the defects are removed then the application would be posted before the adjudicating authority.”*

20. The above judgment indicates that first stage is the filing of the application and thereafter the stage of scrutinizing the



application for finding out the defects. The second stage is when Registry is to scrutinize the defect, which cannot be treated as first stage. The submission of the learned Counsel for the Appellant that when there are defects in the Application, it cannot be said to be filed in accordance with the Rules and such filing is *non-est*, is not in accordance with the Rules. We have noticed Rule 23, sub-rule (1) above, which contemplates that if there are certain non-compliance, the Application can be refused to be entertained. But Rule 10, sub-rule (2) of 2019 Rules, which provides for filing in electronic form, clearly indicates that when Application is registered in the electronic form, the filing is complete, which is not dependent on any further scrutiny in the Registry.

21. We may also notice the judgment of this Tribunal, which has been relied by learned Counsel for the Appellant, that is, **Ravi Ajit Kulkarni** (supra). The relevant paragraph 39 of the judgment is to the following effect:

*“39. This takes us to Rule 20 to 24 and 26 of Part III of NCLT Rules which deals with institution of proceedings, petition, appeals etc. and procedure and particulars to be set out in the address for service and presentation of petition or appeal, etc. Once the application has been “filed” and treated so by numbering the application by the Adjudicating Authority, the next stage contemplated for the Adjudicating Authority is to only appoint the Resolution Professional under the provisions of Section 97 and the Resolution Professional is to then “examine” the application as per requirements laid down in*

*Section 99 where the Resolution Professional has to also give opportunity to the Debtor/ Personal Guarantor and submit the report.....”*

22. In **Ravi Ajit Kulkarni’s** case, the question as to whether the date of filing of an Application is when an Application is filed in the electronic form or the date of filing is the date when Application is numbered, did not arise for consideration. This Tribunal was noticing only the scheme under Section 94 and 95 and in paragraph 39 in the above context has noticed Rule 22 to 24 and 26 of NCLT Rules. The observations in paragraph 39, on which reliance has been placed by the learned Counsel for the Appellant cannot be said to contain any ratio that the date of filing an Application is the date when the Application is numbered by the Tribunal.

23. In this reference, we may notice one judgment of the Hon’ble Supreme Court in **(2006) 2 SCC 777 – Vidyawati Gupta and Ors. v. Bhakti Hari Nayak and Ors.** The Hon’ble Supreme Court in the above case had occasion to consider the question as to when a plaint is treated to be filed. The High Court had occasion to consider the rules, provisions of CPC as well as Calcutta High Court (Original Side) Rules. In the above case, a suit was filed before the Original Side of the Calcutta High Court on 26.07.2002. An interim injunction was also granted on 02.04.2004 by the learned Single Judge. An Appeal was filed before the Division Bench, where a submission was made that the plaint was not filed in accordance with the provisions of Order 6 as amended from 01-07-2002, hence the plaint could not have been entertained and interim injunction granted by Single Judge is without jurisdiction. The said contention was accepted by the Division Bench and Division Bench allowed the Appeal holding

that plaint was not presented as per the amended provisions of Order 6. It was pointed out before the Division Bench that plaint was not accompanied by an affidavit. In paragraph 22, the Hon'ble Supreme Court has noticed the relevant submissions, which was made before the Division Bench of the High Court, it is useful to notice the said submissions in paragraph 22, which is as follows:

*“22. Before the Division Bench, it was submitted on behalf of the appellants that prior to 1-7-2002, Section 26 of the Code merely indicated that every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed. The manner in which such plaint was to be prepared and presented has been provided for in detail in Orders 6 and 7 of the Code. It was submitted on behalf of the appellants that with effect from 1-7-2002 certain amendments were effected to the aforesaid provisions of the Code by Act 46 of 1999 which made it mandatory that in every plaint, facts would have to be proved by an affidavit. It was submitted that subsection (2) was added to Section 26 by way of amendment incorporating the said provision. Correspondingly, amendments were also introduced in Order 6 Rule 15 relating to verification of pleadings and sub-rule (4) was inserted mandating that the person verifying the pleading was also required to furnish an affidavit in support of its pleadings. In ad-*

*dition to the above, Order 4 of the Code, which deals with the institution of suits, was also amended and sub-rule (3) was added to Rule 1 and it was specifically stipulated that the plaint to be filed in compliance with the provisions of Orders 6 and 7 would not be deemed to have been duly instituted unless it complied with the requirements specified in sub-rules (1) and (2). It was the further case of the appellants that having regard to the provisions of Chapter 7 Rule 1 of the Original Side Rules, the reference made in sub-rule (3) of Rule 1 Order 4 of the Code would also include the amendments brought about in the said orders with effect from 1-7-2002. Consequently, it was urged that since the amended requirements of sub-rule (4) of Rule 15 Order 6 had come into operation with effect from 1-7-2002 and since the suit had been instituted thereafter on 26-7-2002, the same could not be said to have been duly instituted within the meaning of sub-rule (3) of Rule 1 Order 4 of the Code. It was urged that the entire proceedings from the filing of the plaint and the entertaining of the interlocutory applications by the learned Single Judge was without jurisdiction and was liable to be declared as such.*

The findings of the Division

Bench of the Calcutta High Court has been noted in paragraph 26:

*“26. After considering the various provisions of the Code along with the relevant amendments introduced in the Code with effect from 1-7-2002 and the relevant provisions of the letters patent and after considering various decisions cited at the Bar, in particular the decision of this Court in State of M.P. v. M.V. Narasimhan [(1975) 2 SCC 377 : 1975 SCC (Cri) 589:*

*AIR 1975 SC 1835] the appeal court came to the conclusion that the instant case stood on a different footing from the various decisions cited in view of the express provisions of Order 4 Rule 1(3) of the Code, as amended. Relying on the interpretation of the expression “duly” used in Order 4 Rule 1(3) in a decision of this Court in LIC of India v. D.J. Bahadur [(1981) 1 SCC 315 : 1981 SCC (L&S) 111] and the decision of the House of Lords in East End Dwellings Co. Ltd. v. Finsbury Borough Council [(1951) 2 All ER 587 (HL)] the Division Bench was of the view that unless the plaint complied with the requirements of the amended provisions, there would be no due institution of the plaint. The Division Bench held that if a plaint is filed without compliance with the requirement of the amended provisions, in the eye of the*

*law no plaint can be said to have been filed and the same is non est. However, having regard to the various decisions cited, including the decision of this Court in Salem Advocate Bar Assn. [(2003) 1 SCC 49] it was also held by the Division Bench that from the moment the error is rectified, the plaint will be deemed to have been properly instituted but the rectification could not relate back to a period when in view of the deeming clause there was no due institution of the plaint. On the aforesaid reasoning, the Division Bench held that the suit could not be dismissed nor could the plaint be rejected because of non-compliance with the amended provisions since the omission had been remedied by the filing of an affidavit by the respondent-plaintiff. It was held that after the defect was removed the suit must be deemed to have been duly instituted with effect from 28-7-2004 and not before that date and consequently the interlocutory order that had been passed by the learned Single Judge at a point of time when the suit had not been duly instituted could not survive.*

The judgment of the Division Bench of the Calcutta High Court was questioned before the Hon’ble Supreme Court and submission was made that the defect, if any, in the plaint is a mere irregularity and can be cured by the amendment and consequently when the verification in the plaint is amended, the

plaint must be taken to be presented not on the date of the amendment, but on the date when it was first presented. It was submitted that Division Bench of the Calcutta High Court erred in holding that having regard to the provisions of sub-rule (3) of Rule 1 Order 4 of the Code, the suit will be deemed to have been instituted on the date on which the defects stood cured and not from the date of initial presentation of the plaint.

The Hon'ble Supreme Court allowed the Appeal and set-aside the Division Bench judgment of the High Court holding that any omission in respect of the plaint shall not render the plaint invalid and that such defect or omission was curable and plaint shall also date back to the presentation of the plaint. In paragraph 50, the Hon'ble Supreme Court also held that amendments were procedural in nature and non-compliance therewith would not automatically render the plaint as non-est. In paragraph 50 and 55 following has been laid down:

*“50. The intention of the legislature in bringing about the various amendments in the Code with effect from 1-7- 2002 were aimed at eliminating the procedural delays in the disposal of civil matters. The amendments effected to Section 26, Order 4 and Order 6 Rule 15, are also geared to achieve such object, but being procedural in nature, they are directory in nature and non-compliance therewith would not automatically render the plaint non est, as has been held by the Division Bench of the Calcutta High Court.*

*55. The appeal is accordingly allowed and the*

*impugned order under challenge is set aside. Consequent upon the views expressed by us, the plaint as filed on behalf of the appellants herein must be deemed to have been presented on 26-7-2002 and not on 28-4-2004 and the interim order passed by the learned Single Judge on 2-4-2004, stands revived. The Division Bench of the Calcutta High Court is directed to reconsider and hear the appeal filed by the respondents herein on merits as expeditiously as possible.”*

24. The above judgment of the Hon'ble Supreme Court also clearly laid down the principal that even if there is any defect in the Application, which is subsequently cured, the date of presentation of the Application shall remain the same and shall not be dependent on the date when defects are cured. We, thus, are of the considered opinion that Adjudicating Authority after due consideration has taken correct view of the matter in holding that filing of the Application under Section 95 by the State Bank of India is on a date when Application was filed and allotted number electronically and the submission of the Appellant that date of filing of the Application shall be the date when Application is numbered has rightly been rejected.

25. We, thus, do not find any error in judgment of Adjudicating Authority rejecting the objection of the Appellant and appointing Resolution Professional for submitting a report. There is no merit in any of the Appeal(s), the same are dismissed. No order as to costs.

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