CA No. 4 of 2021
APOT No. 134 of 2021
with
CP No. 896 of 2016
IA No. ACO 1 of 2021
IN THE HIGH COURT AT CALCUTTA
In appeal from its
ORIGINAL JURISDICTION
CIVIL APPELLATE JURISDICTION

Re: M/s. Corporate Ispat Alloys Ltd. (In Liqn.)

And

Ravindra Jayaswal
Versus
The Official Liquidator

Before:
The Hon'ble Justice I. P. MUKERJI
And
The Hon'ble Justice ANIRUDDHA ROY
Date: 13th September 2021

Appearance:
Mr. Jishnu Choudhury, Advocate
Mr. M. S. Tiwari, Advocate
Mr. Hemant Tiwari, Advocate
Ms. Shweta Poddar, Advocate
for the appellant

Mrs. Smita Das De, Advocate
for the Official Liquidator

The Court: The learned single judge in passing the impugned judgement and order dated 16th August 2021 felt herself bound by Section 454(3) of the Companies Act, 1956 which requires a statement of affairs to be filed within an extended time of period provided in it, not exceeding three months' from a relevant date. Since that three months period had expired, the court felt it had no jurisdiction to extend the time and dismissed the application of the appellant praying for such extension.

We have been shown Rule 128 of the Companies (Court) Rules, 1959 by Mr. Choudhury, learned counsel for the appellant which reads as follows:

> ***"128. Extension of time for submitting statement**. –(1) Where any person required to submit a statement of affairs under section 454 requires an*

> *extension of time for submitting the same, he shall apply in the first instance to the Official Liquidator who may, if he thinks fit, give a written certificate extending the time, which certificate shall be filed with the proceedings. The certificate shall be in Form No. 59.*
>
> *(2) Where the Official Liquidator refuses to grant an extension of time for submitting the statement of affairs, the person required to submit the statement may apply to the Judge in Chambers for extension of time on notice to the Official Liquidator."*

On a fair construction of the sub-section read with the said rule it appears to us that the Official Liquidator may not have the power to extend the time but the power of the Court to extend it by the said rule is not affected. In any case, even if the provision of the Act is said to apply to an application for extension of time before the Court, when read with the said rule, the stipulation "not exceeding three months" appears to be directory and not mandatory.

Taking into account the facts that the winding-up order was passed on 4th November 2019, the complaint against the appellant filed on 23rd December 2020 and the pandemic caused by the covid-19 virus was prevalent in the intervening period, we find some justification for the appellant's delay in filing the statement of affairs.

We set aside the order dated 16th August 2021, allow the application (CA No. 4 of 2021) by granting time till 16th September 2021 to the appellant to file his statement of affairs before the Official Liquidator.

The appeal and the connected application are disposed of accordingly, dispensing with all formalities.

(I. P. MUKERJI, J.)

(ANIRUDDHA ROY, J.)

R. Bose