

(2009) 11 DEL CK 0421

In the Delhi High Court

Case No : Writ Petition (C) 7963 of 2009

Continental Carbon India Ltd.

APPELLANT

Vs

Modi Rubber Ltd.

RESPONDENT

Date of Decision : 09-11-2009

Acts Referred:

Advocates Act, 1961 — Section 48AA

Sick Industrial Companies (Special Provisions) Act, 1985 — Section 19(3), 19(4), 25, 25(1)

Wealth Tax Act, 1957 — Section 18(2A)

Citation : (2010) 1 BC 576 : (2009) 152 CompCas 398 : (2010) 6 RCR(Civil) 178

Hon'ble Judges : Veena Birbal, J; Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Sandeep Sethi, P.S. Sudheer and Sumit Attri, for the Appellant;
Arvind Nigam and Ajay K. Jain, for the Respondent

Final Decision : Allowed

Judgement

Badar Durrez Ahmed, J.—In this writ petition the only issue which arises for our consideration concerns the meaning of the expression "within 45 days from the date on which a copy of the order is issued to him." This expression is used in Section 25(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as "SICA") which, inter alia, prescribes the period of limitation for filing an appeal before the Appellate Authority for Industrial and Financial Reconstruction (hereinafter referred to as the "AAIFR") from an order passed by the Board for Industrial and Financial Reconstruction (hereinafter referred to as the "BIFR").

2. The present petition is directed against the AAIFR's order dated 14.01.2009, whereby the petitioner's appeal against the order dated 24.04.2008 passed by the BIFR has been dismissed solely on the ground of limitation.

3. Sometime in March, 2008, the petitioner, an unsecured creditor of Modi Rubber Limited, came to know of the Draft Rehabilitation Scheme with regard to

the said company. The petitioner was also aware that the Draft Rehabilitation Scheme would be taken up for consideration by the BIFR on 08.04.2008. Consequently, the petitioner obtained a copy of the said scheme from another creditor. On 17.03.2008, the petitioner filed its objections to the Draft Rehabilitation Scheme. On 08.04.2008 when the BIFR considered the Draft Rehabilitation Scheme, the petitioner was not represented at the hearing, although his objections were on record. The BIFR passed an order sanctioning the Draft Rehabilitation Scheme u/s 19(3) and 19(4) of SICA for implementation by all concerned. However, it is pertinent to mention that the said order, whereby the scheme was sanctioned, was issued only to the parties as per the list indicated in the forwarding letter dated 24.04.2008. The petitioner was not mentioned in the said list. In other words, a copy of the order which recorded the proceedings of 08.04.2008 sanctioning the scheme, was not sent to the petitioner.

4. It is the petitioner's case that it came to know of the BIFR's order sanctioning the scheme through another creditor on 20.07.2008. Immediately thereafter, on 21.07.2008, the petitioner applied to the BIFR for a certified copy of the said order dated 08.04.2008, which had been communicated to other parties and creditors. Since the petitioner did not receive a certified copy of the said order, another application for the same was filed on 31.07.2008 and again on 14.08.2008. It is only on 01.09.2008 that the petitioner received a certified copy of the said order. Shortly thereafter, on 19.09.2008, the petitioner filed the appeal bearing No. 211/2008 before the AAIFR in respect of the said order dated 08.04.2008.

5. As mentioned above, the petitioner's appeal was dismissed by the AAIFR on 14.01.2009 only on the ground of limitation as it was of the view that the appeal had been filed beyond the period of 45 days as provided u/s 25(1) of the SICA. The impugned order is as under:

This appeal filed by M/s. Continental Carbon India Ltd. is directed against the impugned order dated 8.4.08 passed by BIFR in case No. 153/04. The appeal was filed on 19.9.08 beyond the period of 45 days as provided u/s 25(1) of SICA.

2. The appeal was listed for admission hearing on 22.10.08. We have heard the arguments advanced by the counsels appearing on behalf of the appellant as well as on behalf of the caveator M/s. Modi Rubber Ltd.(MRL). The appellant company states that it was not represented in the hearing held on 8.4.08 when the impugned order was passed. The appellant is an unsecured creditor of the respondent company i.e. MRL. The BIFR has published a Draft Rehabilitation Scheme (DRS) for the revival of the respondent company by its order dated 18.1.08. The appellant had filed objections to the provisions contained in the DRS for the settlement of dues to BIFR on 17.3.08. From the perusal of the objections filed we find that the appellant was aware that BIFR would consider objections and suggestions to the DRS in the hearing to be held on 8.4.08.

3. In view of the aforesaid facts, the contention of the appellant that he became aware of the issue of impugned order on 8.4.08 after being appraised by other creditors and, thereafter, applied for certified copy of the order on 24.8.08 after a lapse of more than four months is not tenable. It is evident that the appellant was aware of BIFR's hearing on 8.4.08 and if he was of the opinion that his interests are likely to be adversely affected he should have applied for a copy of the order in time. In the aforesaid context the present appeal which has been filed on 19.9.08 is, therefore, clearly barred by limitation and is accordingly dismissed.

6. The learned Counsel for the petitioner contended that a plain reading of Section 25(1) of the SICA would indicate that it is not the date on which the petitioner became aware of an order passed by BIFR which would be the starting point of limitation but the date on which a copy of the order is "issued" to an aggrieved person. According to the learned Counsel for the petitioner, the AAIFR completely misconstrued the provisions of Section 25(1) of SICA by basing its decision on the premise that the petitioner had become "aware" of the impugned order dated 08.04.2008 after being informed by other creditors. The learned Counsel also, referring to paragraph 3 of the impugned order, indicated that the certified copy was applied for on three different occasions on 21.07.2008, 31.07.2008 and 14.08.2008 and not on 24.08.2008 as indicated in the impugned order. It was, therefore, contended by the learned Counsel for the petitioner that the AAIFR had not only erred in law but even its factual premise was wrong.

7. The learned Counsel for the petitioner submitted that the expression "the date on which a copy of the order is issued" as appearing in Section 25(1) of the SICA has to be considered liberally to mean the date on which such an order is "communicated or served" upon the person aggrieved. In support of this proposition he referred to the decision of the Supreme Court in the case of D. Saibaba Vs. Bar Council of India and Another, . In that decision Section 48AA of the Advocates Act, 1961 was considered. The said Section 48-AA reads as under:

48-AA. Review.- The Bar Council of India or any of its committees other than its disciplinary committee, may of its own motion or otherwise review any order, within sixty days of the date of that order, passed by it under this Act.

The Supreme Court considered the meaning of the expression "within 60 days of the date of that order" as appearing in the aforesaid provision. While doing so, the Supreme Court came to the following conclusion:

9. So far as the commencement of the period of limitation for filing the review petition is concerned we are clearly of the opinion that the expression "the date of that order" as occurring in Section 48-AA has to be construed as meaning the date of communication or knowledge of the order to the review petitioner. Where the law provides a remedy to a person, the provision has to be so construed in case of ambiguity as to make the availing of the remedy practical and the exercise of power conferred on the authority meaningful and effective. A

construction which would render the provision nugatory ought to be avoided. True, the process of interpretation cannot be utilized for implanting a heart into a dead provision; however, the power to construe a provision of law can always be so exercised as to give throb to a sinking heart.

The Supreme Court also considered its earlier decision in the case of Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another, wherein the expression "the date of the award" was considered. The Supreme Court noted that the Court assigned a practical meaning to the expression by holding it as meaning the date when the award is either communicated to the party or is known by him either actually or constructively.

8. In this context, when a pointed question was put to the learned Counsel for the petitioner that it had become aware of the passing of the order and it is that date which should be taken as the starting point of limitation, the learned Counsel submitted that the petitioner had become aware of the passing of the order but the order had not been communicated to it nor did it know the exact contents thereof and, therefore, an adverse inference cannot be drawn against the petitioner. The learned Counsel for the petitioner drew our attention to paragraph 11 of D. Saibaba (supra) which referred to another decision of the Supreme Court in the case of State of Punjab Vs. Mst. Qaisar Jehan Begum and Another, wherein the Supreme Court added that the knowledge of the award did not mean a mere knowledge of the fact that an award had been made but it meant that the knowledge must relate to the essential contents of the award. Drawing a parallel from that decision, the learned Counsel for the petitioner submitted that mere knowledge of the fact that an order dated 08.04.2008 had been passed by the BIFR did not amount to knowledge as to the essential contents of the said order which was the sine qua non for the starting point of limitation. A reference was also made to paragraph 14 of the decision in D. Saibaba (supra) wherein the Supreme Court observed as under:

14. How can a person concerned or a person aggrieved be expected to exercise the right of review conferred by the provision unless the order is communicated to or is known to him either actually or constructively? The words "the date of that order", therefore, mean and must be construed as meaning the date of communication or knowledge, actual or constructive, of the order sought to be reviewed.

9. The learned Counsel for the petitioner also referred to a Division Bench decision of this Court in the case of Director General of Income Tax v. BIFR (2001) 5 Comp.L.J 319 (Del). The issue before the Division Bench was whether the appeal filed by the petitioner before the AAIFR was beyond the prescribed period of limitation or not. The facts of that case, as indicated in the said decision, were as under:

5. The Board of Industrial and Financial Reconstruction (in short the "BIFR") passed an order dated 3rd April 1997 in respect of a petition filed by GTC

Industries Ltd. under the Sick Industrial Companies (Special Provisions) Act 1985 (in short the "Act"). Petitioner was not a party before the BIFR. It filed an appeal No. 10/99 on 19th November 1998. AAIFR held that while computing the period of limitation, prescribed u/s 25 of the Act the period from 29th April 1998 to 9th September 1998 has to be included. For coming to aforesaid conclusion AAIFR noted that respondent No. 3/company who was the applicant before the BIFR had Along with its letter dated 29th April 1998 enclosed a copy of the order passed by BIFR. Stand of petitioner was that on coming to know of order passed by BIFR, an inspection was made of the records on 20th August 1998, and an application for certified copy was filed on the same date. The certified copy was made available on 9th September 1998. Appeal was filed on 19th November 1998 and therefore period from 29th April 1998 to 9th September 1998 has no relevance. As indicated above, AAIFR came to the conclusion that the supply of copy of the order passed by BIFR to the Chairman of the Central Board of Direct Taxes constitutes a proper service and the starting point of limitation has to be from the date it was so supplied i.e. 29th April 1998. An application for review of the order was also not entertained and rejected.

It may be relevant to note that in that case the petitioner was not a party before the BIFR but was an aggrieved person and this fact has been specifically noted in the said decision in paragraph 8 thereof. The Division Bench observed that an appeal could be filed by any person aggrieved by an order of the BIFR and that the appellant need not necessarily be a person who was a party before the BIFR. The Division Bench in the case of Director General of Income Tax v. BIFR (supra) held as under:

8. An appeal can be filed by any person aggrieved by an order of the Board made under the Act. Appellant need not necessarily be a person who was party before the BIFR. The appeal can be filed within forty-five days from the date on which a copy of the order is issued to him. On sufficient cause being shown it can be extended up to sixty days, in terms of first proviso to the Section. Obviously the issuance of the order is an act to be done by the Board. It would be also relevant to take note of the provisions contained in Regulation 15 of the Board of Industrial and Financial Reconstruction Regulations 1987 (in short the "Regulation"). The said provisions read as follows:

15. Authentication and communication of orders of the Board.-

(1) All orders and decisions of the Board shall be authenticated by the signature of the Chairman or any other member, or the Secretary, or any other officer empowered in this behalf by the Chairman, and bear the official seal of the Board.

(2) Every order of the Board shall be communicated under the signature of the Secretary or any other officer of the Board duly empowered by Secretary, in this behalf.

The requirements of Regulation 15 are: (a) that the order of the B.I.F.R. shall be communicated; (b) the communication has to be under the signature of the

Secretary or any other officer of the Board duly empowered by the Secretary in this behalf. Obviously the order has to be issued by the Board and the manner in which it is to be authenticated is laid down in Clause (2) of Regulation 15. Learned Counsel for respondent No. 3 submitted that word used is "issued" and not "served" and the person who shall issue is not specifically provided and knowledge from any source other than B.I.F.R. would suffice. We do not find any substance in said stand Scheme of the Statute makes it clear that issuance of the order is an act to be undertaken by B.I.F.R. For the purpose of computation of period of limitation, date of service has to be the effective date. Otherwise a person would be rendered remediless if the order is served after forty-five days or sixty days as the case may be from the date of issue. "To issue" means to send out, to send out officially, to send forth; to deliver, to put into circulation; to exit, to go out. The expressions "issued" and "served" are used as interchangeable terms both in dictionaries and various statutes. The dictionary meaning of the word "issue" is "the act of sending out, put into circulation, deliver with authority or delivery" (see *Banarasi Devi Vs. Income Tax Officer, Calcutta*, . In *Commissioner of Wealth Tax, U.P. and Another Vs. Kundan Lal Behari Lal*, , in the context of Section 18(2A) of Wealth-tax Act, 1957 it was held that "issued" means "served". In the instant case the order was not issued to the petitioner on the ground that it was not a party to the proceeding before it. But when the certified copy was obtained, obviously that is the starting point when the order can be said to have been issued by the BIFR to the petitioner. Therefore, the starting point has to be the date on which the certified copy was handed over i.e. 9th September, 1998. If that is to be taken to be the starting point, appeal is within permissible extended time limit. The view of the AAIFR that appeal was barred by limitation is not correct.

It was submitted by the learned Counsel for the petitioner that the said decision completely covers the present case and consequently the impugned order ought to be set aside and the matter ought to be remitted to the AAIFR for consideration on merits.

10. On the other hand, the learned Counsel for the respondent submitted that a lenient interpretation to the limitation prescribed in Section 25 of the SICA would open the floodgates for litigants/ unsecured creditors of a sick company to challenge the orders of the BIFR by filing belated appeals and thereby endanger the very revival of the sick company. It was also contended that the impugned order passed by the AAIFR did not call for any interference inasmuch as it squarely recognized the fact that the petitioner was aware of the proceedings before the BIFR and that a hearing with regard to the Draft Rehabilitation Scheme was to be held on 08.04.2008. The petitioner chose not to appear on that date and did not make any enquiries with regard to the proceedings of that date for about three months and it is only on 21.07.2008 when the petitioner, for the first time, applied for a certified copy of the order. It was also contended that there was no explanation provided by the petitioner as to why the copy of the order had not been received by them pursuant to the first two applications for

certified copies. It was contended that there was delay in applying for the certified copy and, therefore, the AAIFR was within its right to dismiss the appeal on the ground of limitation. It was contended that the petitioner changed its stand in the writ petition from what it was at the time of hearing of the appeal. It was contended that the petitioner had denied that it was aware of the hearing on 08.04.2008 and the consequent order, whereas in the writ petition it was admitted that though the petitioner was aware that the proceedings would be held on 08.04.2008, the petitioner's advocate was unable to appear on that date before the BIFR. It was, therefore, contended that the petitioner had knowledge of the proceedings of 08.04.2008 and, therefore, the appeal filed on 19.09.2008 before the AAIFR was beyond the period of 45 days stipulated u/s 25(1) of the SICA. The learned Counsel for the respondent relied on the following four decisions:

- (i) Girdhar Lal M. Pittie Vs. Appellate Authority for Industrial and Financial Reconstruction,
- (ii) Director General of Income Tax v. BIFR (2001) 5 CompL.J 319 (Del);
- (iii) Textile Labour Union, Nadiad v. Union of India and Ors. WP(C) 5408/2007 decided on 17.08.2007 (DB); and
- (iv) Vijay Kumar Mills Ltd and Anr. v. ICICI Bank and Ors. WP(C) 2207/2007 decided on 10.07.2008 (DB).

11. Section 25(1) of the SICA reads as under:

25. Appeal.- (1) Any person aggrieved by an order of the Board made under this Act may, within forty-five days from the date on which a copy of the order is issued to him, prefer an appeal to the Appellate Authority:

Provided that the Appellate Authority may entertain any appeal after the said period of forty-five days but not after sixty days from the date aforesaid if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

12. As pointed out in Director General of Income Tax v. BIFR (supra) an appeal can be filed by any person aggrieved by an order of the BIFR made under the SICA. The appeal, however, has to be filed within 45 days from the date on which a copy of the order is "issued to him". The proviso empowers the AAIFR to entertain any appeal even after the said period of 45 days but restricts the same to 60 days from the "date aforesaid", if it is specified that the appellant was prevented by sufficient cause from filing the appeal in time. In the present case, we find that a copy of the order dated 08.04.2008 was not communicated or despatched by the Board to the petitioner. It is also clear that the petitioner received a copy of the order dated 08.04.2008 only on 01.09.2008 and, that too, after the petitioner applied repeatedly for a certified copy of the same. It is an admitted position that the BIFR had not communicated or despatched or sent any copy of the order dated 08.04.2008 to the petitioner. The only issue which

requires consideration is as to whether the expression "issued to him" appearing in Section 25(1) of the SICA would cover a case where an aggrieved person merely has knowledge of an order passed by the BIFR without the BIFR having communicated or sent or despatched a copy of the same to such a person.

13. We shall, first of all, consider the decisions relied upon by the learned Counsel for the respondent. The decision in *Girdhar Lal* (supra) is clearly not applicable and is distinguishable. Paragraph 6 of the said decision records that - "It is not in dispute that the representatives of the petitioners were present when the order was passed by BIFR on 18th March, 1997". In the present case, the petitioner's advocate was not present at the hearing held before the BIFR on 08.04.2008. Furthermore, in *Girdhar Lal* (supra), the Court held that the petitioner did not offer any explanation as to why the certified copy of the order dated 18.03.1997 was not received by the petitioners therein on 21.04.1997, when the letter of the Registrar dated 05.09.1997 placed on record clearly showed that the petitioners were allowed to obtain a copy of the order of the BIFR on 21.04.1997. Though this fact was disputed by the petitioners in that case, the Court did not consider it expedient to go into this question in exercise of its writ jurisdiction. However, in the present case, it has not been established that though the petitioner had applied for the certified copies on 21.07.2008, 31.07.2008 and 14.08.2008, the certified copies were available and ready for delivery on any date prior to 01.09.2008. Therefore, the present case stands on an entirely different footing from that of the decision in *Girdhar Lal* (supra). Thus, the decision in *Girdhar Lal* (supra) is of no help to the respondent in the present case.

14. The decision in *Director General of Income Tax v. BIFR* (supra) has also been relied upon by the petitioner as already noted above and we feel that the said decision entirely supports the petitioner and not the case set up by the respondent. In fact, a Division Bench of this Court in the said decision referred to Regulation 15 of the Board for Industrial and Financial Reconstruction Regulations, 1987, which we have already referred to above. The Division Bench held that the expression "to issue" means "to send out, to send out officially, to send forth; to deliver, to put into circulation; to exit, to go out". The Court also observed that the expressions "issued" and "served" are used as interchangeable terms both in dictionaries and statutes. The Division Bench categorically observed that the order in that case had not been "issued to" the petitioner as it was not a party to the proceeding before it. However, when the certified copy was obtained by the petitioner, obviously, that was the starting point when the order could be said to have been "issued" by the BIFR to the petitioner. That is the exact position in the present case. The order dated 08.04.2008 was not despatched to the petitioner and it is only on the petitioner's application for a certified copy that the same was supplied to the petitioner on 01.09.2008 and that would, in our view, following the decision in *Director General of Income Tax v. BIFR* (supra), be the starting point of limitation. The appeal was filed on 19.09.2008 and was, therefore, within the period of 45 days stipulated in Section

25(1) of the SICA. The decision in Director General of Income Tax v. BIFR (supra), therefore, completely supports the petitioner.

15. The decision in Textile Labour Union, Nadiad (supra), on first blush, tends to support the case of the respondent. It would appear to be so from the following extract:

8. We have considered the pleas urged by Mr Huzaifa Ahmadi on behalf of the petitioner. We are not persuaded to accept them. In case the interpretation sought to be advanced by Mr Ahmadi to Section 25 of SICA is accepted, it is in order for an aggrieved person to file an appeal within 45 days extendable to 60 days of the issue of copy to him, then it could lead to making limitation provision nugatory. Any aggrieved person can seek to apply for a copy at any subsequent stage and then claim right to file an appeal within 45 days of receipt of certified copy....

There are several reasons as to why the said decision cannot be relied upon in support of the respondent's case. The first reason is that the said decision did not notice the earlier Division Bench decision in the case of Director General of Income Tax v. BIFR (supra) nor did it notice the Supreme Court decision in the case of Banarasi Devi Vs. Income Tax Officer, Calcutta, and Commissioner of Wealth Tax, U.P. and Another Vs. Kundan Lal Behari Lal, wherein the specific expression "issue/ issued" was considered and was found to mean, in the least, "despatch of a copy of the order" and also to mean, in some cases, "served". Therefore, the said decision in Textile Labour Union, Nadiad (supra) would have to be regarded as one rendered per incuriam. The second reason for not placing reliance on the said decision in Textile Labour Union, Nadiad (supra) is that the petitioner therein had not made any application to the BIFR for participating in the proceedings as would be apparent from paragraph 9 of the said decision. In the present case, the facts are different. The petitioner had filed objections before the BIFR. Thirdly, in Textile Labour Union, Nadiad (supra), one Mr N. M. Barot in his capacity as President of Textile Labour Association, Nadiad had participated in the proceedings before the BIFR and accepted the scheme in principle. This factor weighed heavily with the Division Bench in coming to the conclusion, which dispelled the case of the petitioner, that it did not have knowledge of the order dated 30.10.2002. This fact, too, distinguishes the case from the present one. Fourthly, the decision in Textile Labour Union, Nadiad (supra) places reliance on the decision in Girdhar Lal (supra), which we have already stated to be distinguishable and inapplicable to the facts of the present case. For all these reasons, the decision in Textile Labour Union, Nadiad (supra) would be of no help to the respondent.

16. Lastly, the respondent relied on the decision in Vijay Kumar Mills (supra). This decision, once again, is distinguishable on facts inasmuch as the petitioner in that case was not only aware of the BIFR's order but was also present when the BIFR passed the order. The petitioner, despite such awareness and knowledge, had applied for the certified copy well beyond the period of 60 days,

which was the outer limit within which the AAIFR could have entertained the appeal. In the present case, however, the petitioner was not present when the order dated 08.04.2008 was passed. In fact, though the proceedings were held on 08.04.2008, the order recording the proceeding was only communicated to the parties (but, not to the petitioner) on 24.04.2008. Thus, the decision in Vijay Kumar Mills (supra) is clearly inapplicable to the facts of the present case. We may also note that in that decision, the question of interpreting the expression "issued" as appearing in Section 25(1) of the SICA was not considered at all and definitely not in the light of the earlier decisions of this Court in Director General of Income Tax v. BIFR (supra) and those of the Supreme Court in the cases of Banarasi Debi (supra) and Kundal Lal Behari Lal (supra).

17. We may also note one more decision of the Supreme Court and that is in the case of Delhi Development Authority Vs. H.C. Khurana, wherein the word "issue/issued" was considered. The question before the Supreme Court was whether the word "issued" would mean "served"? The Supreme Court was of the view that the meaning of the word "issued" has to be gathered from the context in which it is used. In the case before it, the Supreme Court held that the word "issued" did not mean served but it also held that the word issued meant "despatched". The question before the Supreme Court was with regard to the issuance of a charge-sheet to a government servant. The Supreme Court held that the word "issued" mean that the charge-sheet ought to have been despatched to the government servant and that the act would be complete the moment the steps were taken for that purpose, by framing the charge-sheet and despatching it to the government servant and that the further act of its actual service on government servant was not a part of its requirement. However, this decision of the Supreme Court that the word "issued" did not mean "served" was rendered in a contextual sense. In any event, the Supreme Court decision makes it clear that the word "issued", in the least, means "despatched". We may also point out that in Kundal Lal Behari Lal (supra), the Supreme Court held that the expressions "issued" and "served" are used as interchangeable terms and sometimes used to convey the same idea. The Court also observed that the word "issued" was not to be interpreted in the narrow sense of "sent" and that it takes in the entire process of sending notices as well as their service. This decision was rendered in the context of the word "issued" appearing in Section 18(2A) of the Wealth-tax Act, 1957. In Banarasi Debi (supra), the Supreme Court noted that in the legislative practice of our country, the two expressions "issued to" or "served upon" are sometimes used to convey the same idea and that the expression "issued" is at times used in a limited sense and at other times used in a wider sense to include service.

18. In view of the foregoing discussion, it cannot be said that the impugned order dated 08.04.2008 was "issued to" the petitioner within the meaning of Section 25(1) of the SICA on any date prior to 01.09.2008 when the petitioner received a certified copy of the said order. That being the case, the appeal having been filed on 19.09.2008, was clearly within the period of limitation of 45 days. Consequently, the appeal ought to have been heard on merits. The AAIFR,

however, dismissed the appeal on the ground of limitation. Accordingly, we set aside the impugned order dated 14.01.2009 and revive the appeal of the petitioner before the AAIFR with the direction that the same be disposed of on merits.

The writ petition is allowed. The parties shall bear their own costs.