

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

IA No.214 of 2018

in

Company Appeal (AT) No.59 of 2018

[Arising out of order dated 14.08.2017 passed by National Company Law Tribunal, Mumbai Bench in Interlocutory Application No.27/NCLT/MUM/2017 in Transfer Company Petition No.19 of 2015]

IN THE MATTER OF COMPANY APPEAL OF:-

1. Rohan Packaging Products Ltd.
Office No.6, 3rd Floor,
Dealing Chambers,
Deccan Gymkhana, J.M. Raod,
Pune – 411 004
2. Rajendra Bhate
529, Shivaji Nagar,
Sangali – 416 416
3. Mahendra Bhate
31B, Sudha Kalash, J. Mehta Raod,
Walkeshwar,
Mumbai – 400 006
4. Siddhartha Bhate
529, Shivaji Nagar,
Sangali – 416 416

...Applicants

Versus

1. Lakhmichand Gidwani
“Jyoti” 341/A, Revenue Colony,
Near Market Yard, Sangli – 416 416
2. Mahesh Gidwani
“Jyoti” 341/A, Revenue Colony,
Near Market Yard, Sangli – 416 416
3. Anil Hirani
49, Ashirwad Bungalow,
Ruikar Colony, Kolhapur

4. Shyamlal Khatri
Ram aur Shyam Dresses,
Main Road, Athani, Karnataka
5. Jagdish Ghumara
Chartered Accountant,
B/14, Jessica Natakwala Lane,
S.V. Lane, Borivali (W),
Mumbai – 400 092
6. [Harsh Finance and Trading Pvt. Ltd. **[Deleted]**
B-1, Manaji Blocks,
Jawji Marg, Nana Chowk,
Mumbai – 400 007]
7. [Ministry of Corporate Affairs, **[Deleted]**
'A' wing, Shastri Bhavan,
Rajendra Prasad Road,
New Delhi – 110 001]
8. Alpesh Modi
Flat No.1603, 16th Floor,
Rashmi Heights, Opp. MW Desai Hospital
Dayabhai Patel Road, Malad East
Mumbai – 400 097
9. Mr. Rajesh Nariya
B/204, Radha Krishna Apt.
S.V. Road, Dahisar (East)
Mumbai – 400 068
10. [Mr. Ganesh Patil **[Deleted]**
Near Laxmi Mandir Chowk
Kupwad – 416 416]
11. Mr. Yashwant Kagale
Near Tangsal Maruti Mandir
Brahmanpuri, Miraj – 416 415

...Respondents

Present: Shri Kamal Ahuja and Shri Sameer Srivastava, Advocates for the Appellants

Shri P.K. Mittal, Advocate for Respondents

ORAL JUDGEMENT**16.07.2018****A.I.S. Cheema, J. :**

1. This application has been filed by the Appellants who have filed the appeal against Impugned Order dated 14.08.2017 whereby the learned NCLT, Mumbai ("NCLT" in brief) dismissed the Interlocutory Application No.27 of 2017 in Transfer Company Petition 19 of 2015 challenging the maintainability of the said Transfer Company Petition 19 of 2015 filed by the present Respondents 1 to 4. According to the Appellants when the order was passed by NCLT, it was not displayed on the website for considerable period. The certified copy was applied for and collected on 10th October, 2018. It was, however, noticed that in the Order, the Interlocutory Application No.27 of 2017 was inadvertently marked as MA 109 of 2017 in place of IA 27 of 2017. The NCLT issued Corrigendum Order on 1st January, 2018 rectifying the inadvertent error. According to the Appellants if the period is calculated from the Corrigendum Order, the Appeal is within limitation. However, in case period of limitation begins from receipt of certified copy on 10th October, 2017, there is delay of 97 days in filing the appeal. The Appellants have prayed condonation of delay of 97 days.

2. The original Petitioners have opposed the delay condonation application vide Reply (Diary No.4697). The Respondents point out that after the Impugned Order was passed on 14.08.2017, the Company Petition had come up before NCLT on 21st September, 2017 as can be seen

from copy of the Cause List which has been filed. The learned counsel for the Respondents submitted that the Appellants were aware of the Impugned Order passed but delayed taking steps and/or filing of this appeal and thus the delay does not deserve to be condoned. According to the counsel, keeping in view Section 421 of the Companies Act, 2013, the delay of more than 45 days, beyond the permissible 45 days for filing the appeal cannot be condoned.

3. The counsel for Appellants submits that the Cause List referred to by the learned counsel for Respondents is not relevant. He submits that they got the certified copy only on 10th October, 2017 and that is material.

4. The learned counsel for Appellants is submitting that the limitation should be counted from the date of Corrigendum Order dated 1st January, 2018 and not from the date of the original Order dated 14th August, 2017. Having heard counsel for both sides, we find that the Order which is impugned before us is dated 14th August, 2017 and not the order dated 1st January, 2018. The Order dated 1st January, 2018 (Page – 89 A) is Corrigendum Order which was passed on the basis of the Appellants moving Praecipe dated 27th December, 2017 before NCLT seeking rectification with reference to the MA number. As what is impugned before us is the order dated 14th August, 2017, we have to look into the question of limitation from that date. Appellants are aggrieved by Order dated 14.08.2017 and Appeal filed is against that Order. We do not agree with

the learned counsel for the Appellants that date of 1st January, 2018 would be relevant for the purpose of calculating delay.

5. Sub-Sections (1) to (3) of Section 421 of the Companies Act, 2013 are relevant for this matter and read as under:

“(1) Any person aggrieved by an order of the Tribunal may prefer an appeal to the Appellate Tribunal.

(2) No appeal shall lie to the Appellate Tribunal from an order made by the Tribunal with the consent of parties.

(3) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order of the Tribunal is made available to the person aggrieved and shall be in such form, and accompanied by such fees, as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days from the date aforesaid, but within a further period not exceeding forty-five days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period.”

6. From reading the above provision, it is clear that a person aggrieved by an Order may file appeal within the period prescribed of 45 days from the date on which copy of the Order of the Tribunal is made available to

the person aggrieved. The Appellate Tribunal can entertain appeal after expiry of the said period of 45 days but within further period not exceeding 45 days, if the Tribunal is satisfied that the Appellants were prevented by sufficient cause from filing the appeal within that period. Counsel for Respondent has relied on Judgement in the matter of “**Bengal Chemists & Druggists Assn. vs. Kalyan Chowdhury**” – of Hon’ble The Supreme Court of India (Civil Appeal No. 684 of 2018 decided on 02.02.2018) reported as MANU/SC/0099/2018 to state that after such 45 days, this Tribunal cannot condone further period.

7. When we look at the present matter, the Impugned Order is dated 14th August, 2017. We intend to ignore the argument of the learned counsel for the Respondents that after 14th August, 2017, the matter in NCLT had been posted on 21st September, 2017 as Order sheet of presence is not shown. Even if we take the date of 10th October, 2017 when Certified Copy was issued, as the basis for calculating the period of limitation, still we find there are obstacles for the Appellants to cross.

8. Page - 89 H of the appeal shows that certified true copy issued free of cost was issued on 10.10.2017. The Praecipe filed for correction before NCLT is dated 27th December, 2017 as can be seen from Corrigendum Order. The period between 10.10.2017 to 27.12.2017 would be about 77 days. First the Appellants consumed 77 days to move the NCLT for rectification. The NCLT passed orders on 01.01.2018. Even if we ignore that period from 27.12.2017 to 01.01.2018 and give benefit to the

Appellants, it does not help Appellants. The Corrigendum Order was passed on 1st January, 2018 (Page - 89 A) and the Appellants were given certified true copy of such Corrigendum Order on 2nd January, 2018. The appeal has been presented only on 31st January, 2018 and thus another about 28 days were consumed. Adding the earlier 77 days consumed and another 28 days consumed, the appeal is filed after 100 days. As such, the appeal is clearly time barred. This I.A. itself also seeks condoning of delay of 97 days. Apart from this, for reasons discussed, the appeal is time barred.

9. We reject the I.A. to condone delay and dismiss the appeal tendered as Time Barred.

No Order as to costs.

[Justice A.I.S. Cheema]
Member (Judicial)

[Balvinder Singh]
Member (Technical)

/rs/nn