

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Company Appeal (AT) No. 326 of 2019**

[Arising out of Order dated 23<sup>rd</sup> September, 2019 passed by the Adjudicating Authority (National Company Law Tribunal) Chandigarh Bench, Chandigarh in CA No. 67 of 2017 in diary No. 1991 dated 17.03.2017]

**IN THE MATTER OF:**

**Akal Spring Limited & Ors.**

**.....Appellants**

**Vs.**

**Amrex Marketing Private Limited**

**.....Respondent**

**Present :**

**For Appellants: Mr. Gaurav Varma, Surekh K. Baxy and Mr. Shantanu Singh, Advocates.**

**For Respondent: Ms. Niharika Ahluwalia, Mr. Kiran and Ms. Chetan, Advocates.**

**J U D G M E N T**

**VENUGOPAL M. J.**

Heard the Learned Counsel for the Appellant.

It is the averment of the Appellants in I.A. No. 3632 of 2019 that the certified copy of the Impugned order dated 23<sup>rd</sup> September, 2019 passed by the Tribunal ('National Company Law Tribunal'), Chandigarh Bench, Chandigarh in CA No. 67 of 2017 in diary No. 1991 dated 17.03.2017 was applied for by them and in view of the fact that the limitation period in preferring the Appeal expires

on 07.11.2019, an exemption may be given to the Appellants from filing the certified copy of the impugned order.

2. Taking into consideration of the aforesaid request made on the side of the Appellants this Tribunal permits the Appellants to prefer the present Appeal without the production of certified copy of the impugned order. However, this Tribunal directs the Appellants to furnish the certified copy of the Impugned Order dated 23<sup>rd</sup> September, 2019 in CA No. 67 of 2017 in diary No. 1991 dated 17.03.2017 within a week from today. Accordingly, I.A. No. 3632 of 2019 stands disposed of.

3. The Appellants / Respondents have preferred the instant Company Appeal (AT)No. 326 of 2019 as 'Aggrieved Persons' in respect of impugned order dated 23<sup>rd</sup> September, 2019 passed by the Adjudicating Authority ('National Company Law Tribunal') Chandigarh Bench, Chandigarh in condoning the delay of 186 days in CA No. 67/2017 in Diary No. 1991 dated 17.03.2017, in filing the Appeal.

4. Earlier, the Adjudicating Authority while passing the Impugned Order dated 23<sup>rd</sup> September, 2019 in CA No. 67/2017 in Diary No. 1991 in condoning the delay and allowed the application filed by the Respondent / Applicant whereby a direction was issued to the Respondent / Applicant to deposit the cost of Rs. 25,000/- in the 'Prime Minister's National Relief Fund' within two weeks from the date of passing of the Impugned Order etc.

5. The Learned Counsel for the Appellants urges that the Adjudicating Authority had failed to appreciate that the statutory prescribed time period to

supply for 'Transfer of Shares' and 'Rectification of Register' is 60 days from the date of receipt of refusal or in case no notice of refusal was transmitted by the Company, within a period of 90 days from the date of which the Instrument was transferred was delivered to the Company.

6. In this connection, the Learned Counsel for the Appellants takes a stand that while assuming jurisdiction, the Learned Adjudicating Authority does not possess the power to condone the delay of 186 days, although, admittedly the delay was more than 1700 days.

7. The Learned Counsel for the Appellants points out that the actual delay was '1795' days as the request for registration of 'Transfer of Shares' was for the first time made on 29<sup>th</sup> November, 2011 and the same was refused. In fact, the cause of action for filing of the Appeal before the Tribunal had lapsed on 28<sup>th</sup> March, 2012 and that the Respondent / Applicant had not ascribed any sufficient reason to explain the delay.

8. The Learned Counsel for the Appellants point out that on 29.11.2011, the Respondent / Applicant through its Director had applied for registration of 1,00,000 shares of the first Appellant in its name and that the Respondent / Applicant applied to the 1<sup>st</sup> Appellant for 'Transfer of Shares' of the 1<sup>st</sup> Appellant / Company in its favour. Further, the shares applied for 'Transfer' by the Respondent / Applicant are the same held by 'Unit Trust of India' (A/C Vecaus-I) was of the 'Subscription Agreement' and the request was accompanied with the 'Original Share Certificates', 'Original Transfer Deed', 'Memorandum and

Article of Association' of the Appellant / Company and the documents were addressed to the Registered Office of the 1<sup>st</sup> Appellant / Company.

9. Added further, the Learned Counsel for the Appellants brings it to the notice of this Appellate Tribunal that the 1<sup>st</sup> Appellant / Company had not registered the 'Transfer of Shares' in favour of the Respondent / Applicant and neither issued any notice of refusal and, therefore, as per the provisions of Section 111A of the Companies Act, 1956, an Appeal before the Hon'ble Tribunal ought to have been made within four months from the date of delivery of the 'Instrument of Transfer', i.e. on or before 28.03.2012.

10. The Learned Counsel for the Appellant(s) contends that the 1<sup>st</sup> Appellant is a Public Limited Company providing for free transferability of shares and it has in good faith on 22.12.2014, through its Director had responded to the letter by informing the Respondent / Applicant for 'Transfer of Shares', the latter is to comply with the statutory process and provide all mandatory requirements such as 'Original share certificates', 'Transfer Deed' etc.

11. Yet another submission of Learned Counsel for the Appellants is that the 1<sup>st</sup> Appellant / Public Company had onwards responded to the request of the Respondent and allowed it the Respondent to issue a 'Transfer Instrument' as per Companies Act, 2013.

12. Expatiating his contention, the Learned Counsel for the Appellants puts forth a plea that '*Refusal of Registration of Transfer of Shares*' is effectively the 'Refusal of shares' and not the 'Instrument'. That apart, the Respondent in the

year 2011 had sought for the registration of 'Transfer of Shares' which was deemed to be refused, as no acceptance of refusal was issued by the Appellants. Subsequently, the Respondent / Applicant instead of preferring the 'Appeal' before the Tribunal against the said refusal relodges a fresh instrument for transfer of the same shares, with an intention to revive a time barred action.

13. The Learned Counsel for the Appellants submits that the Tribunal had committed an error in applying its mind in respect of 'issue' of limitation by blindly reported the decision of Hon'ble High Court of Calcutta reported in **2015 SCC online Cal 10466 M/s Mackintosh Burn Limited Vs. M/s Sarkar & Chowdhury Enterprises Private Limited**, in allowing the Application.

14. The Learned Counsel for the Appellants points out that the Tribunal ('National Company Law Tribunal') Chandigarh Branch had failed to consider the decision of **Hon'ble Supreme Court Mackintosh Burn Limited Vs. M/s Sarkar & Chowdhury Enterprises Private Limited 2018 5 SCC Page 575** wherein it was observed that the High Court on erroneous appreciation of facts recorded that there were no other grounds except ground of limitation taken by the Public Company. Also, the Hon'ble High Court at page 583 at para 19 interalia observed

....."The order dated 16.09.2015 passed by the Company Law Board, Kolkata Bench, Kolkata, the order dated 15.10.2015 in *Mackintosh Burn Ltd. v. Sarkar & Chowdhury Enterprises (P) Ltd.* 2015(SCC Online Cal 10466) and the order dated 15.09.2017 in

*in Mackintosh Burn Ltd. v. Sarkar & Chowdhury Enterprises (P) Ltd. 2017 (SCC Online Cal 20415) are set aside. The matter is remitted to the Company Law Board, now the National Company Law Tribunal for consideration afresh of the appeal filed under Section 58 of the Companies Act, 1956”.*

15. It is the contention of the Learned Counsel for the Appellants that the period of ‘Limitation’ will commence from the date of first refusal to register the ‘Transfer Instrument’ in the year 2011 and that the ingredients of Section 111 of the Companies Act, 1956 clearly provided that an ‘Appeal’ shall be made within 4 months from the date on which the ‘Instrument of Transfer’ was delivered and, therefore, the time period for filing of the ‘Appeal’ expired on 28.03.2012. That Apart, the Appellants take a stand that the Respondent / Applicant had not exercised its available remedies within the ‘Parameters’ of Law and continued to insist upon the 1<sup>st</sup> Appellant to register the ‘Transfer Instrument’ dated 29.11.2011 till 2015.

16. The Learned Counsel for the Appellants contends that in any event, the Respondent / Applicant had not offered ‘satisfactory reasons’ to explain the delay and has adopted a casual and laconic approach in its ‘Application’ for Condonation of Delay.

17. *Per contra*, it is the contention of the Learned Counsel for the Respondent that by means of Impugned Order dated 23.09.2019 passed by the ‘National

Company Law Tribunal' Chandigarh Bench, Chandigarh that delay of 186 days in preferring the application was condoned subject to certain direction being issued thereto.

18. The Learned Counsel for the Respondent contends that the dispute between the parties revolves around the “acquisition of 1,00,000 shares” of the Appellant / Public Limited Company, by the Respondent / Applicant and shockingly the Appellant / Company had refused to register the “Transfer of Shares” on 19<sup>th</sup> August, 2016, on the pretext that the ‘Articles of Association’ of the Public Limited Company contains a ‘First right of refusal by other Members’.

19. The Learned Counsel for Respondent urges before this Court that the request for ‘Transfer of Shares’ made by the Respondent / Applicant through letter dated 29.11.2011 was never delivered to the Appellant and that the 1<sup>st</sup> Appellant had categorically admitted that the Respondent’s request through letter dated 29.11.2011 was ‘undelivered’ and never received by it. Furthermore, the 1<sup>st</sup> Appellant/ Public Limited Company in the letter dated 11.01.2016 had requested for the ‘Correct Share Transfer Form’ so that they could register the ‘transfer’ in the name of the Respondent / Company and hence the Appellants are estopped from taking a different plea.

20. It is the submission of the Learned Counsel for the Respondent that the malafide act of refusal by the Appellant(s) to registering the ‘Transfer of Shares’ is apparent from the fact that the 1<sup>st</sup> Appellant / Company through its letter dated 25.07.2015 had offered to buy-back the 1,00,000 shares from the

Respondent and when this was refused on 19.08.2016 for the first time the Appellant had raised the issue on registration of 'Transfer of Shares' in the 'Articles of Association'.

21. The Learned Counsel for the Respondent comes out with an argument that the 'Issue of Limitation' is not to be pressed into service, to defeat the substantive right of 'Transferee' which accrues to it by means of an 'Operation of Law'.

22. The Learned Counsel for the Respondent relies on the decision (**Property Company Limited vs. Rohinten Daddy Mazda, reported in (2017) 200 CompCas 87(Cal)**) wherein the order of 'Company Law Board' in condoning the delay was not interfered with.

23. The Learned Counsel for Respondent places reliance refers to the decision of **Golden Vyapar (P) Ltd. & Ors. Vs. Shefali Papers Ltd. & Ors.** wherein a delay of approximately eight years was condoned.

24. The Learned Counsel for Respondent refers to the order dated 04.11.2017 of 'National Company Law Tribunal', Mumbai Bench between **Kamlesh Kalidas Shah Vs. State Bank of India Ltd. in Company Application No. 13/58(4) & 59/CLB/MB/MAH/2015 Under Section 58(4) & 59 of Companies Act, 1956** wherein at para – 7 interalia observed as follows: -

.....relief – “As a consequence, we are of the considered view that on this technical ground, specially when the matter related to the



*period when the provisions of Companies Act, 2013 were not applicable, it is unfair, unlawful and unjustifiable to throw this vigilant Petitioner out of the litigation at the very threshold without granting him an opportunity of hearing which otherwise is his one of the judicial rights.”*

25. While winding up, it is the contention of the Learned Counsel for Respondent that the delay in filing the Application before the Tribunal was passed on the reason that the Respondent / Applicant of his registered Office in Kolkata and that the Appellant's Office place his Office in Ludhiana and further that the Respondent had to collect the documents from the year 2011 etc. and that the Hon'ble Tribunal was specified as to the instance of 'Sufficient Cause' to condone the delay. Moreover, it is the case of the Respondent that no prejudice would be caused to the Appellants, if the main matter was heard on merits.

26. This Court has heard the Learned Counsel for the respective parties and noticed their contentions.

27. At the outset, this Tribunal pertinently points out that the Impugned Order dated 23<sup>rd</sup> September, 2019 in CA No. 67/2017 in Diary No. 1991 dated 17.03.2017 passed by the 'National Company Law Tribunal', Chandigarh Branch pertains to 'Condonation of Delay Application' and therefore, this

Tribunal is not traversing upon the merits of the controversies between the parties in main Dispute and also not delving deep into the same.

28. While dealing with an 'Application for condonation of Delay', the concerned Tribunal / Appropriate Authority is only required to consider whether the '*Plea of Sufficiency of Cause*' is a reasonable one or otherwise, of course after taking into consideration of the facts and circumstances of a given case. Undoubtedly, consideration of an existence of a '*Sufficient Cause*' is within the ambit of the concerned Authority, which has to be exercised based on sound judicial principles.

29. It cannot be gain said that 'Right to refuse' registration of transfer of shares, 'Sufficient Cause' is question of law and the cause shown for refusal is sufficient or otherwise in a given case, can also be a 'mixed question of law' and fact. Besides this, a refusal may be on the basis of 'Breach of Law' or any other 'Sufficient Cause'.

30. It is to be remembered under the Companies Act, 1956, in case of refusal to transfer the shares by a Public Company, no time limit was specified in filing an Appeal against 'Refusal' and whereas under the Companies Act, 2013 it is mentioned that in case, the 'Transferee' receives an intimation of refusal, an Appeal has to be filed within 60 days of such refusal and in case any intimation was received by a person, then, within 90 days of lodgement of the instrument of transfer with the Company.

31. As regards the 'Condonation of Delay' matter, the length and breadth of the delay is an irrelevant one. On the other hand, the acceptance of

explanation offered by a litigant / party is a material factor. If a party / litigant exhibits a 'Sufficient Cause' for the delay in question, then an Appropriate Authority may condone the delay and admit the main matter for 'Hearing' on merits.

32. One cannot brush aside a vital fact that in Law, a Lis' is to be decided on merits and no party should be non-suited harping on technicalities and also by adopting a pedantic approach.

33. There is no two opinion of the fact that although 'Day-Today' explanation for 'Condonation of Delay' is not necessary, but 'Sufficiency of Reason' must exist. As a matter of fact, the term 'Sufficient Cause' is not defined in the 'Limitation Act, 1963', but the establishment of 'Sufficient Cause' is a condition precedent for exercising the discretion by the 'Competent Authority'.

34. At this juncture, a mere running of the Letter dated 11.01.2016 of the 1<sup>st</sup> Appellant / 1<sup>st</sup> Respondent addressed to the Respondent / Appellant latently and patently indicates that the request of the Respondent dated 29.11.2011 was 'undelivered' and also it was mentioned that the Letter dated 11.10.2014 was never received by it etc.

35. In the present case, the Respondent / Company, is registered in West Bengal has a registered office at Kolkata and that the 1<sup>st</sup> Respondent / Appellant's Company registered office is situated at Ludhiana. Furthermore, the Respondent / Applicant before the Tribunal had averred in the application

that 1<sup>st</sup> Appellant / Company had refused to register the 'Transfer of shares' on 20.09.2016 and that the Respondent / Applicant had to collect documents pertaining to year 2011, which were to be annexed along with the Application, being necessary documents for arriving at a decision of the case.

36. Apart from that, the Respondent's stand is that documents were also to be sent to Chandigarh, together with original of all the documents, as enunciated by 'NCLT' Rules, 2016. In this background, according to the Respondent / Applicant, the 'delay of 186 days' had occurred before the Application was first filed in March, 2017. Also that the Tribunal had exercised its discretion by allowing the CA No. 67/2017 subject to the deposit of Rs. 25,000/- etc. and the same may not be interfered by this Tribunal, at this stage in the interest of justice.

37. In the instant case on going through Impugned Order dated 23.09.2019 passed by the Tribunal, this Tribunal comes to a consequent conclusion that the Tribunal had borne in mind the well settled principal in Law that when the matter is 'fought on merits', the same is to be disposed of in accordance with law etc. Viewed in this perspective, the Tribunal had allowed the delay of condonation application in CA No. 67/2017 by passing the impugned order dated 23<sup>rd</sup> September, 2019 by exercising its discretionary power based on the facts and circumstances of the present case and the same, in the considered opinion of this Tribunal requires no interference, because of the

reason the said order does not suffer from any material irregularity or patent illegality in the eye of Law.

38. In view of the upshot, the Company Appeal (AT) No. 326 of 2019 fails and the same is dismissed without costs. It is made quite clear that the dismissal of present Appeal will not preclude the respective parties to raise factual and legal pleas before the Tribunal at the time of hearing of Company Petition. Connected Interlocutory Application No. 3631/2019 stands closed.

[Justice S. J. Mukhopadhaya]  
Chairperson

[Justice Venugopal M.]  
Member (Judicial)

**New Delhi**

**25<sup>th</sup> November, 2019**

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