

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No.366 of 2017

(Arising out of Order dated 31st March, 2017 passed by the National Company Law Tribunal, Principal Bench, New Delhi in Company Petition No. 34(ND)/2012]

IN THE MATTER OF:

Dr. Jang Bahadur Singh and Ors.

...Appellants

Vs

Frick India Ltd. and Ors.

...Respondents

Present: For Appellants:- Shri Jayant K. Mehta, Shri Parvinder Tanwar, Shri Naren, Shri Nakul and Shri Rahul Kukreja, Advocates.

For Respondents: - Shri Amit Sibal, Senior Advocate assisted by Shri N.P.S Chawla and Shri Vinay Tripathi, Advocates.

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

This appeal has been preferred by Appellants against order dated 31st March, 2017 passed by National Company Law Tribunal (hereinafter referred to as "Tribunal"), Principal Bench, New Delhi in Company Petition No. 34(ND)/2012 whereby and whereunder the Tribunal dismissed the petition preferred by the Appellants under Sections 397, 398, 402 & 403 read with

Section 111A of the Companies Act, 1956. There being a delay, a petition for condonation of delay has also been filed.

2. On notice, the Respondents have appeared and case was heard on the question of condonation of delay, for which, the petition has been preferred by the Appellants.

3. The impugned order was passed by the Tribunal on 31st March, 2017 but a defective appeal was presented by Appellants on 16th May, 2017. The defects were not removed for more than five months and after removal of the defects it was filed on 25th October, 2017.

4. Learned counsel appearing on behalf of the Appellants submitted that the Appellants filed an Interlocutory Application No. 37769/2017 before Hon'ble Supreme Court in one pending SLP (Civil) No. 3277 of 2016 with prayer to set aside the order dated 31st March, 2017, but the Hon'ble Supreme Court refused to entertain the said application with following observation:

“Since the application (I.A. No. 37769/2017) filed in a decided matter is not maintainable, the same is dismissed as withdrawn. However, this order will not affect the parties approaching any other forum in accordance with law.”

5. It was submitted that in view of the fact that the Appellants have moved before a wrong forum, the Appellants are entitled to get benefit of

Section 14 of the Limitation Act, 1963 and the period of pendency of the case before the Hon'ble Supreme Court should be deleted.

6. It was further submitted that certified copy of the impugned order is made available to the Appellants on 13th July, 2017 which is the starting point to count the period of limitation. Further, according to learned counsel for the Appellants, the ninety days' period if counted from 13th July, 2017, it will be over on or about 11th October, 2017. The Appeal having filed on 25th October, 2017 as there being further delay of about eight days in preferring the appeal, the period consumed before the wrong forum i.e. Hon'ble Supreme Court between 14th August, 2017 to 13th October, 2017 be excluded under Section 14 of the Limitation Act, 1963 for computation of period of ninety days.

7. From the record we find that the appeal was preferred by Appellant on 16th May, 2017, meaning thereby that the impugned order was communicated to the Appellants by the said date. Though, according to the Respondents the copy of the impugned order was made available by the Tribunal to the Appellants immediately after 31st March, 2017.

8. If the date of filing of the appeal i.e. 16th May, 2017 is taken as the starting point to count the limitation, in such case, the appeal was required to be filed by 30th June, 2017, which has been filed. However, instead of removing the defects for more than five months, the Appellant moved before the Hon'ble Supreme Court by preferring an Interlocutory

Application in a disposed of Special Leave Petition which was not maintainable.

9. The Appellants have not explained the delay of five months in removing the defects and in absence of such explanation, we are not satisfied with the question of condonation of delay merely on the ground that they preferred an Interlocutory Application before the Hon'ble Supreme Court.

10. The Appellants cannot take advantage of Section 14 of the Limitation Act as they had the knowledge that the Appellate Tribunal is the right forum before which they moved on 16th May, 2017 and preferred the defective appeal. Therefore, they cannot take plea that they moved before a wrong forum i.e. the Hon'ble Supreme Court.

11. Rule 26 of the National Company Law Appellate Tribunal Rules, 2016 (hereinafter referred to as "NCLAT Rules"), which relates to endorsement and scrutiny of petition or appeal or document, reads as follows: -

"26. Endorsement and scrutiny of petition or appeal or document.-(1) The person in charge of the filing-counter shall immediately on receipt of appeal or document affix the date and stamp of the Appellate Tribunal thereon and also on the additional copies of the index and return the acknowledgement to the party and he shall also

affix his initials on the stamp affixed on the first page of the copies and enter the particulars of all such documents in the register after daily filing and assign a diary number which shall be entered below the date stamp and thereafter cause it to be sent for scrutiny.

(2) If, on scrutiny, the appeal or document is found to be defective, such document shall, after notice to the party, be returned for compliance and if there is a failure to comply within seven days from the date of return, the same shall be placed before the Registrar who may pass appropriate orders.

(3) The Registrar may for sufficient cause return the said document for rectification or amendment to the party filing the same, and for this purpose may allow to the party concerned such reasonable time as he may consider necessary or extend the time for compliance.

(4) Where the party fails to take any step for the removal of the defect within the time fixed for the same, the Registrar may, for reasons to be recorded in writing, decline to register the appeal or pleading or document.”

12. In spite of time granted by the Registrar to remove the defects, the Appellants failed to take any step to remove the defects within the time fixed. As the failure is intentional, as is apparent from the record and the manner in which the defective appeal is preferred to save the limitation period and then to take a chance before the Hon'ble Supreme Court, the Appellants do not deserve any sympathy.

13. For the reasons aforesaid, we are not inclined to condone the delay. The appeal is accordingly dismissed for not taking steps to remove the defects within the fixed time. No cost.

(Justice Bansi Lal Bhat)
Member (Judicial)

(Justice S.J. Mukhopadhaya)
Chairperson

NEW DELHI

21st December, 2017

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