

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**I.A No. 1774 of 2020****In****Company Appeal (AT) No. 122 of 2020****IN THE MATTER OF:**

**Mr. Arul Muthu Kumaara Samy,
Ex-Shareholder of
M/s Chikara Eco Ventures,
R/o No. 1131, Sector 17-B, IIFCO Colony,
Gurgaon 122001 Haryana**

...Appellant**Versus**

**Registrar of Companies,
Block No. 6, B Wing, 2nd Floor,
Shastri Bhawan 26,
Haddows Road, Chennai 600034**

... Respondent**Present:**

**For Appellant : Mr K.S. Mahadevan and Mr. Ankit Gusain,
Advocates**

For Respondent : Mr. PS Singh Advocate.

ORDER**(30th September, 2020)**

This Order shall govern the disposal of I.A. No. 1774 of 2020 filed by the Appellant under Rule 11, and 31 of the National Company Law Appellate Rules, 2016 seeking condonation of 338 days delay in refileing the Appeal.

2. The Appellant filed the Appeal under Section 421 of the Companies Act, 2013 (In brief 'the Act') against the order dated 27.05.2019 passed by the National Company Law Tribunal, Chennai Bench, Chennai in Company Appeal No. 399(252) of 2019 whereby the name of the Company M/s Chikara Eco Ventures Ltd. is restored to the Register of Companies maintained by the RoC, Chennai. The Appeal was filed on 28.08.2019. The Registry after scrutiny of the Appeal on 01.10.2019 returned the Appeal Paper Book to the Appellant for removing the defects. The Appellant refiled the Appeal on

28.07.2020 and filed the above referred Application for condonation of delay of 338 days in refiling the Appeal.

3. The matter was placed before the Registrar of this Tribunal who observed that the Appellant was required to refile the Appeal within 7 days from the date of intimation of the defects. But the Appellant has refiled the Appeal after a delay of 338 days. Therefore, the Appeal is placed before the Bench for orders on the above referred Application for condonation of delay.

4. Learned Counsel for the Appellant submits that the delay in filing the Appeal is only four 4 days and the delay of refiling of the Appeal is 338 days as certain documents were to be obtained and translated and thereafter, Covid-19 lockdown was imposed with effect from 24.03.2020. Therefore, there is a delay in refiling the Appeal.

5. Learned Counsel for the Appellant further submitted that once an Appeal has been numbered, it means the delay in refiling Appeal has already been condoned. For this proposition, he placed reliance on the Judgment of the Hon'ble Supreme Court in the Case of P. Ram Bhoopal Vs. Pragnya River Bridge Developers Ltd. & Ors. in Civil Appeal No. 19486/2017 passed on 04.12.2017. It is also argued that no prejudice would be caused to the Respondent if the delay is condoned. The delay was neither intentional nor deliberate on the part of the Appellant. Therefore, it can be condoned. For this proposition, he cited the Judgment of Hon'ble Supreme Court in the Case of Collector Land Acquisition, Anant Nag and Ors Vs. Mst. Katiji & Ors. (1987) 2 SCC 107.

6. Learned Counsel for the Appellant lastly submitted that Section 252 (1) of the Act, itself provides a period of 3 years to any person aggrieved by

the removal of the name of the Company from the Registrar of Companies. Furthermore, Section 252(3) of the Act, provides that the period to approach the Tribunal is 20 years from the date of publication of notification of striking of the name of the Company. Thus, the intent of the Act, itself shows that the restoration of the name of the Company is long drawn process and time limit to Appeal against the striking of name of a Company for some stakeholders is as long as 20 years. Keeping in view, the intent of the Act, delay in refiling the Appeal may be condoned.

7. Learned Counsel for the Respondent opposed the Application and submitted that this Tribunal cannot condone the delay more 45 days as provided under Section 421 (3) of the Act. Thus, the Application deserves to be dismissed.

8. After hearing the Learned Counsel for the parties we have perused the record.

9. Admittedly, the Impugned Order was passed by the Tribunal on 27.05.2019 certified copy of the Order was delivered on 10.07.2019. As per Section 421 of the Act. The Appellant was required to file the Appeal within 45 days i.e. till 24.08.2019. However, the Appellant has filed the Appeal on 28.08.2019 i.e. beyond the period of Limitation. The Office after scrutiny of the Memo of Appeal intimated the defect to the Appellant on 01.10.2019 and on the same day the Memo of Appeal was returned to the Appellant. The Appellant was supposed to cure the defects within 7 days and has to file the Appeal on or before the 08.10.2019. However, the Appellant has refiled the Appeal on 28.07.2020 i.e. a delay of 338 days.

10. Learned Counsel for the Appellant has placed reliance on the Judgment of the P. Ram Bhoopal and Ors. (Supra). In that case the facts are quite different. The Appeal was filed with an Application for condonation of delay before the expiration of 90 days and when the defects were pointed out by the Registry. The defects were cured within 4 days. It means the Appeal is filed with the Application for condonation of delay in grace period. Therefore, Hon'ble Supreme Court held that the Appellate Tribunal can condone the delay.

11. It is pertinent to note that if the defects pointed out by the Registry, are not removed within the 7 days period as prescribed under the Rule, 26 of the National Company Law Appellate Rules, 2016. The Appeal is treated to be a fresh Appeal and in such a situation, this Appellate Tribunal cannot condone the delay beyond 45 days. This Appellate Tribunal while dealing the case in Mr. Mr. Jitendra Virmani Vs. MRO Tek Realty Ltd. & Ors. Interlocutory Application No. 221 of 2017 in Company Appeal (AT) No. 138 of 2017 decided on 15.05.2017 held that: -

“19. As noticed, the re-filing/fresh filing of the appeal was made on 1st May, 2017.

20. As per the provisions of the Act and Rules framed there under, the Appellant having received the copy of the order on 7th January, 2017 was required to file within 45 days i.e. by 21st February, 2017. For the purpose of condonation of delay under proviso to sub-section (2) of Section 421, the Appellate Tribunal could have condoned the delay if it would have been filed within another 45 days i.e. by 7th of April, 2017. After 7th April, 2017 the Appellate Tribunal has no jurisdiction to condone the delay or to entertain the Appeal.

21. Appeal was filed on 31st March, 2017 and the defect was to be removed within 7 days i.e. by 7th April, 2017. Therefore, no extension of time could have been granted even by the Registrar to remove the defects particularly when the Appellate Court has no power to condone delay after 90 days of receipt of Judgment which expired on 7th April, 2017 in the present case.

22. Learned Counsel for the Appellant submitted that the Appellate Tribunal has inherent power to condone the delay and thereby to do substantive justice. We do not subscribe to such submissions in view of

the specific provision made under sub-section (2) of Section 421 and the decision of Hon'ble Supreme Court in "Union of India Vs. Popular Construction Company", (2001) 8 SCC 470, wherein the Hon'ble Apex Court held that when the legislature prescribed a special limitation for the purpose of Appeal, the court cannot entertain an Appeal beyond the extended period, if prescribed therein, relevant portion of which reads as under:-

"11. Thus, where the legislature prescribed a special limitation for the purpose of the Appeal and the period of limitation of 60 days was to be computed after taking the aid of Sections 4, 5 and 12 of the Limitation Act, the specific inclusion of these sections meant that to that extent only the provisions of the Limitation Act stood extended and the applicability of the other provisions, by necessary implication stood excluded [Patel Naranbhai Marghabhai V. Dhulabhai Galbabbhai, (1992) 4 SCC 264.]

12. As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are "but not thereafter" used in the proviso to sub-section (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar the application of Section 5 of that Act. Parliament did not need to go further. To hold that the court could entertain an application to set aside the award beyond the extended period under the proviso, would render the phrase "but not thereafter" wholly otiose. No principle of interpretation would justify such a result."

12. With the aforesaid, we are of the considered view that this Tribunal cannot condone the delay beyond 45 days. Thus, the Application for condonation of delay of 338 days is dismissed consequently, the Company Appeal (AT) No. 122 of 2020 is also dismissed as barred by Limitation.

No order as to cost.

(Justice Jarat Kumar Jain)
Member (Judicial)

(Balvinder Singh)
Member (Technical)

(V.P. Singh)
Member (Technical)

SC