

THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

M.A. No.100/2018

In

Unnumbered Restoration Application No. _____/2018

In

Company Appeal (AT) No.40/2018

In the matter of:

Dr. Venigalla Naveen Applicant/ Appellant

Versus

Dr. Rama Krishna Prasad
Power Pvt. Ltd. & Anr. Respondents

Appearance: Shri S.K. Giri and Shri Ayandeb Mitra, Advocates for the
Applicant.

02.05.2018

This is an application under Rule 26 of the National Company Law Appellate Tribunal Rules, 2016 (hereinafter referred to as the Rules) seeking condonation of delay in re-filing the Application for restoration.

2. The allegation in the Application is that the local counsel for the Applicant had not informed the Applicant about the defects raised by the Registry and so was under the impression that the Restoration Application had already been filed. The entire file was with the local counsel and no records were available with the Applicant, which resulted in a delay of 45 days in removing the defects. Hence, the prayer is to condone the delay of 45 days in re-filing the Application for restoration.

3. The points that arise for consideration are: -

- i) Is the time given for complying the direction to cure the defects liable to be extended under sub-rule (3) to rule 26 of the NCLAT Rules, 2016 (hereinafter referred to as the Rules)?
- ii) Reliefs.

4. **Point No. (i):** - Heard the learned counsel for the Applicant.

5. The Applicant hereinabove had filed Company Appeal (AT) No.40/2018, which was dismissed for default by the Hon'ble Appellate Tribunal by order dated 07.02.2018. Pursuant to the same, the Applicant on 05.03.2018 filed an Application for restoring the Appeal. The Application on scrutiny was found to be defective and hence on the same day, the Applicant was informed of the defects with a direction to remove the same within a period of seven days. The period of seven days expired on 13.03.2018. However, the Application was presented after curing the defects on 27.04.2018 and therefore, the Section has put up the matter before me under sub-rule (2) to rule 26 on the ground that there is a delay of 45 days.

6. Unlike Rule 48 of the NCLT Rules, 2016, which inter-alia stipulates the time limit within which an application for restoration has to be filed, there is no similar provision in the NCLAT Rules, 2016 providing for such a contingency. However, Section 433 of the Companies Act, 2013 says that the provisions of the Limitation Act, 1963 shall, as far as may be, apply to proceedings or appeals before the Tribunal or the Appellate Tribunal as the case may be.

7. Sub-section (1) to Section 424 of the Companies Act, 2013 (hereinafter referred to as the Act) says that the Appellate Tribunal shall not while disposing of any proceeding before it be bound by the procedure laid down in the Code of Civil Procedure, 1908 (CPC), but shall be guided by the principles of natural justice and subject to the other provisions of this Act or the I&B Code and any rules made thereunder. Clause (g) of sub-section (2) to Section 424 says that the Appellate Tribunal for the purpose of discharging its functions under the Act and the I&B Code is vested with the same powers as are vested in a Civil Court under the CPC while trying a suit in respect of setting aside any order of dismissal of any representation for default or any order passed by it ex-parte.

8. Article 122 of the Limitation Act, 1963 says that an application to restore a suit or appeal dismissed for default has to be filed within 30 days from the date of dismissal. Therefore, on the basis of clause (g) of sub-section (2) to section 424 of the Act read with Article 122 of the Limitation Act, 1963 the period of limitation for

filing an application for restoration of an appeal dismissed for default can be taken as 30 days from the date of dismissal.

9. The certified free copy of the order dated 07.02.2018 was issued on 08.02.2018. If limitation is computed from 09.02.2018, the period would expire on 10.03.2018. In para-6 of the Application for restoration, it is alleged that the Applicant received the copy of the order only on 17.02.2018. However, no proof in support of the same has been produced/ filed. Assuming that this allegation is right, the period of limitation of 30 days computed from 18.02.2018 would expire on 19.03.2018.

10. The Application for restoration of the appeal is seen presented on 05.03.2018. Therefore, the initial presentation of the Application in both the aforesaid situation is well within the period of 30 days. However, the subsequent presentation after curing the defects on 27.04.2018 is much beyond the period of 30 days provided for filing the Application for restoration. Therefore, in these circumstances it may not be proper to extend the time for compliance given under sub-rule (2) to rule 26 in exercise of the power under sub-rule (3) to rule 26 of the Rules. Hence, the matter may be placed before the Hon'ble Appellate Tribunal. Point answered accordingly.

11. **Point No.(ii):** - M.A. No.100/2018 disposed of accordingly.

List the matter before the Hon'ble Appellate Tribunal on 03.05.2018.

(C.S. Sudha)
Registrar