

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No. 119-120 of 2019

IN THE MATTER OF:

Nehal Ahad

....Appellant

Vs.

Union of India

....Respondent

Present:

For Appellant: Mr. Niraj Kumar Singh, Advocate

For Respondent:

ORDER

04.07.2019: This appeal has been preferred by the appellant against orders dated 31.01.2019 and 04.02.2019 passed by National Company Law Tribunal (hereinafter referred to as Tribunal) Mumbai Bench, Mumbai after a long delay. Petition for condonation of delay i.e. I.A. No. 1639-1648 of 2019 has been filed wherein following stand has been taken by the Appellant:-

“1. The Applicant has filed a Appeal, under Section 421 of the Act, for the reasons and on the grounds, as delineated therein, inter alia, impugning the legality and propriety of the Order, dated 31.01.2019, primarily on the ground that it has been passed in violation to the principles to the Natural justice and in contravention to the cardinal Principles of Law, as no opportunity of being heard was accorded to the Applicant nor the averments, made in the Application, satisfy the mandatory conditions, necessary for impleadment of a person/entity, in the array of the parties. It is an admitted fact that the Appellant/ Applicant was not served with the copy of Orders, dated 31.01.2019 and 04.02.2019.

2. Be that as it may, the tone and tenor of the Order, dated 31.1.2019, led to a natural and logical understanding that the Order, dated 31.01.2019, is susceptible to modification, subject to the objections, to be filed by proposed Respondents/Applicant/ Appellant. Accordingly, the Applicant filed Objections to the Application and sought indulgence of the Ld. Tribunal to dispose of the M.A. being 407/2019, which was declined by the Ld. Tribunal in the hearing, held on 25.4.2019 wherein, the Applicant was directed/ asked to exhaust the legal remedies, available to him. Since, the Applicant came to know of the finality of the Order, dated 31.01.2019, on 25.4.2019, the present Appeal has been filed there from wherein the period of Limitation has been computed from 25.4.2019.

3. *However, since the impugned order has been passed on 31.1.2019, apparently, the present Appeal has been filed beyond the period of Limitation. Be that as it may, the delay, if any, in preferring the present Appeal has been occasioned by circumstances, narrated hereinabove, which are neither intentional nor deliberate rather are beyond the control of Applicant. Even otherwise, the present Appeal raises important question of Law which cannot and must not be ignored/overlooked under the specter of Limitation which is an enabling provision to attain the ends of justice and cannot be used as a tool to frustrate and defeat the ends of justice.”*

2. Though the aforesaid plea has been taken by the Appellant that he was not served the certified copy of the impugned orders dated 31.01.2019 and 04.02.2019 about which he came to know on 25.04.2019 against which the appeal has been filed on 09.05.2019 i.e. after delay of more than 90 days.

3. An appeal under Section 421 of the Companies Act, 2013 has been preferred before this Appellate Tribunal. As per sub Section (3), the 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. It is further provided that the Appellate Tribunal may entertain an appeal after the expiry of 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 the period.

4. Learned counsel for the appellant submits that he came to know of finality of the order dated 31.01.2019 on 25.04.2019 as the order dated 31.01.2019 had been passed without offering opportunities of being heard to the Appellant and the Appellant have filed objection seeking modification there to. This argument is flawed both in techniques as well as in substance. The appellant having been arrayed as party Respondent in terms of order dated

31.01.2019 is not deprived of his right to defend and such order is final as regards impleadment/ arraignment. Therefore, the limitation has to be computed upon such computation the appeal is clearly barred by limitation.

5. We are not satisfied with the sufficiency of cause pleaded by the appellant as per sub-Section (3) of Section 421 and dismiss the appeal being barred by limitation. However, we make it clear that the order passed in this appeal will not come in the way of the Appellant to take up his defence before the Tribunal or before the Court of Competent Jurisdiction where cases are pending.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

sa/gc

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