

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

**M.A. No.44/2017**

**In**

**Un-numbered Competition Appeal (AT) No.     /2017**  
**(F.No.17/11/2017/NCLAT/UR/23)**

**In the matter of:**

Khandelwal Earth Movers & Anr. .... Appellants

Versus

Competition Commission of India & Anr. .... Respondents

Appearance:       None for the Appellants

**15.12.2017**

The aforesaid Appeal under Section 53B of the Competition Act, 2002 (hereinafter referred to as the Act) was presented before the Registry on 17.11.2017. The appeal when scrutinized on 18.11.2017 was found to be defective and hence the Appellant was informed of the defects on the same day with a direction to cure the same within a period of seven days. The period of seven days expired on 25.11.2017. However, the appeal was re-submitted after curing the defects only on 13.12.2017 and hence the Section has put up the matter before me for appropriate orders.

2.     Today, none appeared on behalf of the Appellants.

3.     Regulation 7(1) of the Competition Appellate Tribunal (Procedure) Regulations, 2011 (hereinafter referred to as the Regulations) say that every appeal or application supported by an affidavit and a certified copy of the impugned order shall be verified and if found to be in order, be registered by the Registrar and shall be given a serial number. Regulation 7(2) says that if the appeal, on scrutiny, is found to be defective, the Appellant shall be advised to rectify the defects and after rectification of the defects by the Appellant, the appeal shall be registered.

4.     Sub-section (2) to section 53B of the Competition Act, 2002 stipulates that an appeal under sub-section (1) shall be filed within a period of 60 days from the date on which the impugned order is served on the aggrieved party. In the case on hand, the impugned order dated 14.09.2017 is stated to have been received by the

Appellants on 21.09.2017. Therefore, the period of limitation of 60 days computed from 22.09.2017 would expire on 20.11.2017. The appeal presented on 17.11.2017 is therefore, within the period of 60 days stipulated under the aforesaid provisions of the Act.

5. Appellants are seen to have filed the aforesaid M.A. in which it is alleged that the counsel for the Appellant was laid up and hence the delay of 24 days in presenting the appeal after curing the defects and 19 days' delay in filing the present appeal. Therefore, the prayer in the application is to condone the delay of 24 days in re-filing the appeal after curing the defects and condone the delay of 19 days in filing the present appeal. Exercising the powers under 7(1) and 7(2) of the Regulations, the Registrar can grant time to rectify the defects and thereafter register the appeal. However, the Registrar has no power to condone any delay, if the appeal is presented beyond 60 days, which power can be exercised only by the Hon'ble Appellate Tribunal as stipulated in the proviso to sub-section (2) to section 53B of the Act. Therefore, the Appellant ought to have filed separate applications instead of clubbing the prayers and filing a single application. If the Appellants require any relief of condonation of delay in filing the appeal, they will have to move a separate interlocutory application before the Hon'ble Appellate Tribunal.

6. M.A. No.44/2017 disposed of accordingly.

List the matter before the Hon'ble Appellate Tribunal on 18.12.2017.

(C.S. Sudha)  
Registrar