

THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

M.A. No.45/2017

In

Un-numbered Competition Appeal (AT) No. /2017
(F.No.17/11/2017/NCLAT/UR/21)

In the matter of:

Bimal Kumar Khandelwal & Anr. Applicants

Versus

Competition Commission of India & Anr. Respondents

Appearance: Shri Nakul Mohta, Advocate for the Applicants

18.12.2017

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 Applicants 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 14.12.2017 and hence the Section has put up the matter before me for appropriate orders.

2. Heard the learned counsel for the Applicants.
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 Applicants shall be advised to rectify the defects and after rectification of the defects by the Applicants, 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 para-2 of the

appeal memorandum, the impugned order dated 14.09.2017 is stated to have been received by the Applicants on 20.09.2017. Therefore, the period of limitation of 60 days computed from 21.09.2017 would expire on 19.11.2017. The appeal presented on 17.11.2017 is therefore, within the period of 60 days stipulated under the aforesaid provisions of the Act.

5. Applicants are seen to have filed the aforesaid M.A. in which it is alleged that the counsel for the Applicants was laid up and hence the delay of 25 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 25 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(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 Applicants ought to have filed separate applications instead of clubbing the prayers and filing a single application. If the Applicants 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.45/2017 disposed of accordingly.

List the matter before the Hon'ble Appellate Tribunal on 19.12.2017.

(C.S. Sudha)
Registrar