

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

**M.A. No.41/2018**

**In**

**Unnumbered Restoration Application No. \_\_\_\_/2018**

**In**

**Company Appeal (AT)(Insolvency) No.314/2017**

**In the matter of:**

Shaw Traders

.... Applicant

Versus

Balaji Paper & Newsprint Pvt. Ltd.

.... Respondent

Appearance:        Shri Shiv Shankar Banerjee and Ms. Madhurima Ghosh,  
                             Advocates for the Applicant.

**16.02.2018**

This Application is described to be an “Application on behalf of the appellant u/s 5 of the Limitation act for condonation of delay re-filing along with affidavit”.

2.     The allegation in the Application is that the time taken for drafting the Application and other formalities coupled with the illness of the Applicant caused the delay in curing the defects and re-filing the Application. Therefore, the prayer is to condone the delay of 24 days.

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.

The Appellant in the aforesaid appeal has filed the above mentioned Restoration Application under Section 151 CPC for recalling the order dated 15.12.2017 passed by the Hon'ble Appellate Tribunal.

5. Unlike Rule 48 of the NCLT Rules, 2016, which inter-alia stipulates the time limit within which an application for restoration can be filed, there is no similar provision either in the NCLAT Rules, 2016 or the Insolvency Code providing for such a contingency. According to the learned counsel for the Applicant the period for filing an application for restoration/ recall of an order is 30 days in the light of Order IX Rule 4 read with the relevant provision of the Limitation Act, 1963.

6. 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. However, 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.

7. 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.

8. The Hon'ble Appellate Tribunal by order dated 15.12.2017 dismissed the appeal for default as well as on the ground of limitation. The certified copy of the order was issued on 19.12.2017. Therefore, the period of limitation of 30 days computed from 20.12.2017 would expire on 18.01.2018.

9. The Application for restoration of the appeal is seen presented on 10.01.2018. The Application when scrutinised on 12.01.2018 was found to be defective and hence on the same day, the dealing hand concerned tried a few times to contact on mobile the Applicant through his counsel in order to inform him of the defects. However, there was no response. Thereafter, the defective Application was taken back on 16.01.2018 and the Applicant was directed to cure the defects within a period of seven days. The period of seven days expired on 19.01.2018, if computed from 13.01.2018 and if computed from 17.01.2018 would expire on 23.01.2018. However, the defects were cured and the Application presented on 12.02.2018 only, which is with a delay of about 20 to 23 days.

10. It was argued on behalf of the Applicant that since the Restoration Application has been filed well within the period of limitation of 30 days, the Registrar has the power to condone the delay in filing the Application after curing the defects.

11. The present M.A. ought to have been filed under sub-rule (3) to rule 26 of the Rules and not under Section 5 of the Limitation Act as stated in the Application. Now the question is whether the Registrar in exercise of the powers under sub-rule (3) to rule 26 extend the time granted for compliance under sub-rule (2) to rule 26 of the Rules. As noticed earlier, the period of 30 days for filing the Application for restoration expired on 18.01.2018. However, the Application has been presented after curing the defects much after the period of limitation of 30 days, i.e., with a delay of about a month. Therefore, 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.

12. **Point No.(ii):** - M.A. No.41/2018 disposed of accordingly.

List the matter before the Hon'ble Appellate Tribunal on 20.02.2018.

(C.S. Sudha)  
Registrar