

THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL

NEW DELHI

I.A. No.328 of 2017

In

Un-numbered Company Appeal (AT) No. /2017

In the matter of :

M/s Montreaux Resorts (P) Ltd. & others Applicants

Versus

M/s Ascot Hotel & Resorts & others Respondents

ORDER

This is an Application seen filed under Rule 26 r/w Rule 11 of the NCLAT Rules, 2016 (hereinafter referred to as the Rules) and Section 148-A CPC r/w Limitation Act, inter-alia seeking condonation of delay in re-submitting the Appeal after curing the defects.

The allegation of the Applicants is that on 12.04.2017 they had presented an Appeal, which was returned to them on 17.04.2017 with a direction to cure the defects and re-submit it within 7 days. Though the Applicants approached the office on 21.04.2017, 24.04.2017, 11.05.2017 and 16.05.2017, the then dealing hand concerned refused to receive the Appeal on the ground of some “unnamed defects” and as the Appeal has been refused to be accepted, the present Application under the aforementioned Sections.

The points that arise for consideration are: -

- i) Whether the delay in re-presenting/re-submitting the Appeal is liable to be condoned under sub-section (3) to Rule 26 of the Rules?
- ii) Have the defects noted by the Section concerned been cured?
- iii) Reliefs?

Heard the learned counsel for the Applicants.

Point No.(i) & (ii): - The Applicants herein on 12.04.2017 had presented an Appeal against the order of the Hon'ble NCLT, New Delhi dated 13.01.2017 in Company Petition No.144 (ND) 2016. The Appeal on scrutiny was found to be defective and hence on 17.04.2017 it was returned with a direction to cure the defects and re-submit the same within a period of 7 days. The period of 7 days expired on 24.04.2017. The Appeal was not re-submitted within the said period of 7 days, on the other hand the present Application has been filed on 29.06.2017 on the grounds already referred to.

Here it would be apposite to refer to sub-sections (2) (3) & (4) to Rule 26 of the Rules, which reads thus: -

“(2) If, on scrutiny, the appeal or document is found to be defective, such document shall, after notice to the party, be returned for compliance and if there is a failure to comply within seven days from the date of return, the same shall be placed before the Registrar who may pass appropriate orders.

(3) The Registrar may for sufficient cause return the said document for rectification or amendment to the party filing the same, and for this purpose may allow to the party concerned such reasonable time as he may consider necessary or extend the time for compliance.

(4) Where the party fails to take any step for the removal of the defect within the time fixed for the same, the Registrar may, for reasons to be recorded in writing, decline to register the appeal or pleading or document.”

As stated earlier, the present Application is seen filed only on 29.06.2017. Reason for inaction from 16.05.2017, i.e. the last day on which the dealing hand is alleged to have refused to take the Appeal on file, to 02.06.2017, i.e. the day on which the Hon'ble Tribunal closed for the vacation or for that matter during vacation, is stated to be the other professional engagements of the learned counsel for the Applicants. Assuming that the allegation of the Applicants that the dealing hand concerned had refused to take the Appeal on file is taken to be true, an application of the present nature ought to have been filed much earlier or the matter brought to the notice of the Hon'ble Tribunal. This has not been done.

Sub rule (3) to Rule 26 enables the Registrar to grant reasonable time beyond the period of seven days referred to in Sub rule (2) for curing the defects, provided sufficient cause(s) is/are shown. Now even assuming for a moment that the reasons stated for the delay are taken to be true, even then the Appeal cannot be taken on file as it still continues to be defective. No purpose would be served in granting further time for curing the defects pointed out by the Section as the learned counsel do not agree to the same and canvasses for numbering the Appeal and taking the same on file.

The defects sheet put up by the Section refers to a number of defects, i.e. a total of 17 defects to be specific. The Section concerned informs me that apart from defect no. 2, 3, 4, 8, 13, 14 and 16 which have been cured subsequently, the remaining defects pointed out by the Section remain to be rectified. This stand taken by the Section is disputed by the learned counsel for the Applicants who argued that many of the defects are just repetitions, that defect no.1 raised that the Appeal is barred by limitation and so an application for condonation of delay with the necessary fees ought to be filed is incorrect, as such an application is already on record, i.e., at pages 151 to 155 of Volume 1 of the Appeal paper book. The said

application being part of the appeal memorandum, for which court fee of Rs. 5,000/- has already been paid, the Applicants are no longer liable to pay any further fees for the same.

This argument does not seem to be correct in the light of Rule 55 of the Rules, which says that fees for filing Appeal or Interlocutory Application and process fees shall be as prescribed in the Schedule of fee to the NCLAT Rules. The Schedule prescribes the fees to be payable for appeals filed under Section 218(3) and Section 421(1) of the Companies Act, 2016. However, the Hon'ble Chairman in exercise of the powers conferred by Rule 104 of the NCLAT Rules has prescribed the fees for filing interlocutory application for stay, directions, condonation of delay etc., as Rs.1000/- per application. Therefore, the objection raised by the Section that the Applicants are liable to pay court fees of Rs. 1,000/- for every interlocutory application filed is correct.

Moreover, the interim application placed at pages 151 to 155 of Volume 1 of the Appeal paper book is also not in the proper format as several reliefs are seen to have been clubbed into one single application. The prayers in the application are for stay of the impugned order; for condonation of delay; for serving interrogatories on Respondent No.3 and 13; to direct Respondents 2 and 3 to appear in person etc. Separate applications supported by proper affidavits with necessary fees incorporating the aforesaid reliefs are required to be filed by the Applicants.

It was also argued that there is no delay in filing the Appeal and that the Applicants need not file any application for condonation of delay as the impugned order is a void one and hence an appeal against a void order can be filed at any point of time and that there is no limitation whatsoever regarding the same. I refrain from making any comments on this argument as this is a matter to be decided by the Hon'ble Tribunal.

As per the Memo of Parties, there are 4 Appellants. However, the declaration and verification in the Appeal Memorandum is seen signed by Appellant No.5 in addition to Appellant No.1, 3 and 4. The 1st Appellant is described as a Private Limited Company acting through its shareholder Shri Deepak Khosla, a Non-Executive Director. Shri Deepak Khosla is also stated to be the counsel for all the Appellants including Appellant No.1. However, no Board Resolution has been produced to show that either Shri Deepak Khosla or the other Appellants have been authorised to represent the 1st Appellant Company in the proceedings.

Further, there is no synopsis or list of dates filed till date. There are also no proper affidavits filed along with the Appeal Memorandum. Appeal continues to be defective and so in exercise of the power under sub-section (4) to Rule 26 of the Rules, I decline to register the Appeal. Points answered accordingly.

Point No.3: - I.A. No.328/2017 is dismissed.

It was submitted on behalf of the Applicants that though there is no specific provision in the Rules providing for an appeal from the order(s) of the Registrar, by virtue of Rule 11 of the Rules, the Hon'ble Tribunal does have ample power to decide the matter and so the matter may be placed before the Hon'ble Tribunal. Hence as requested and in the interest of justice the matter be placed before the Hon'ble Tribunal for necessary orders/ directions.

List the matter before the Hon'ble Tribunal on 17th July, 2017.

(C.S. Sudha)
Registrar

13.07.2017