

THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Restoration Application (AT) No.03/2017

In

Company Appeal (AT) No.128 of 2017

In the matter of :

K.N. Pillai

.... Applicant

Versus

R. Prasanth & Ors.

.... Respondent

Appearance: Shri P.K. Mittal, Advocate for the Applicant.

18.07.2017

The Appellant in the aforesaid Appeal has filed the present application on 13.07.2017 to set aside the order dated 25.04.2017 passed by the Hon'ble Appellate Tribunal dismissing the Appeal. The application seems to be defective.

The aforesaid application is seen filed on 13.07.2017, which is after the period prescribed under the Limitation Act, 1963 for filing applications of similar nature. It is true that neither the Companies Act, 2013 (hereinafter referred to as the Act) nor the NCLAT Rules, 2016 (hereinafter referred to as the Rules) specifically provide for the procedure or the time limit within which an application of the like nature is to be filed.

Here it would be apposite to refer to Section 433 of the Act, which says that the provisions of the Limitation Act shall as far as may be apply to proceedings or Appeals before the Tribunal or the Appellate Tribunal as the case may be. That being the position, Article 122 of the Limitation Act, which provides that an application to restore a suit or appeal or application for review or revision dismissed for default of appearance or for want of prosecution etc. shall be filed within a period of thirty days from the date of dismissal, would squarely apply in this case.

As noticed earlier, the Hon'ble Appellate Tribunal by order dated 25.04.2017 has dismissed the Appeal for want of prosecution. The period of thirty days provided under the Limitation Act for restoring an Appeal dismissed for default is thirty days, which in this case expired on 24.05.2017. However, the present application for restoration of the Appeal is seen filed only on 13.07.2017 which is much after the period provided for filing the application.

Heard the learned counsel for the Applicant. A week's time is requested for curing the defect and filing an application under Section 5 of the Limitation Act for condoning the delay in filing the present application.

Hence, list the matter before me on 25th July, 2017.

(C.S. Sudha)
Registrar