

THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

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

In the matter of:

M/s. Applesoft

.... Appellant

Versus

Chief Secretary, Govt. of Karnataka & 3 others

.... Respondents

Appearance: None for the Appellant.

14.11.2017

The aforesaid Appeal under Section 53B of the Competition Act, 2002 (hereinafter referred to as the Act of 2002) was received on 23.10.2017 by post. The Appeal was defective and hence, the counsel for the Appellant by way of email was informed of the defects. He was also directed to cure the defects and re-submit the Appeal. On 26.10.2017, an email was received from the counsel giving his response to the defects pointed out by the Registry. The defects pointed out by the Scrutiny Section had not been cured and therefore, he was again directed to cure the defects. On 06.11.2017, the counsel again sent a fresh set of Appeal by post, which is still defective. Hence, the Section has put up the matter before me for appropriate orders.

2. Certain amendments were made in the Competition Act, 2002 by the Finance Act, 2017 (hereinafter referred to as the Act of 2017). In addition to the amendments made, some of the sections of the Act were also omitted, i.e., sections 53C, 53D, 53E, 53F, 53G, 53H, 53-I, 53J, 53K, 53L, 53M, 53R and clauses (mb), (mc) and (md) of sub-section (2) to section 63 of the Act.

3. Clause (ma) of sub-section (2) to section 63 of the Act of 2002 empowers the Central Government to make Rules by way of notification to carry out the provisions of the Act. This clause has not been omitted or repealed by the amendment brought in by way of the Act of 2017. Therefore, the Competition Appellate Tribunal (Form and Fee for Filing an Appeal and Fee for Filing Compensation Applications) Rules,

2009 (hereinafter referred to as the Rules) made by the Central Government in exercise of the powers conferred by clauses (ma) and (me) of sub-section (2) of section 63 read with sub-section (2) of section 53B and sub-section (2) of section 53N of the Act remains in the statute book.

4. Likewise, section 53-O of the Act of 2002, which has also not been omitted or repealed by the Act of 2017, empowers the Appellate Tribunal (which after amendment is this Hon'ble Appellate Tribunal) to regulate its own procedure subject to the provisions of the Act and any rules made by the Central Government. In exercise of the power contained under this section the erstwhile Competition Appellate Tribunal made the Competition Appellate Tribunal (Procedure for Appeals and Applications) Regulations, 2010, which also continues to be in statute book without any amendments.

5. The NCLAT Rules, 2016 has not been made applicable by any order or notification of the Central Government to the Appeals filed under the Competition Act, 2002. No new Rules or Regulations under the Act of 2002 have been made after the provisions of the Act of 2017 were made applicable. Therefore, the Rules and Regulations referred to hereinabove, which have not been amended pursuant to the Act of 2017 coming into force, can only be followed by the Registry to process any appeal(s) or application(s) filed under the Act of 2002. It was in the light of the aforesaid position, the present Appeal though sent by post was received by the Registry and the Section concerned directed to process the same in the light of sub-rules (1) and (2) to Rule 3 of the aforesaid Rules.

6. Sub-rules (1) to (5) of Rule 3 prescribe the form and the procedure for filing an appeal under the Act of 2002. The format of the appeal is contained in the Form appended to the Rules. Further, sub-rule (6) to rule 3 stipulates that the procedure for filing an appeal would be as decided by the Appellate Tribunal. As noticed earlier, the Rules of 2009 and the Regulations of 2010 have neither been amended nor have any new rules or regulations made. The provisions of the Act of 2002 under which the Rules and Regulations were made continue to remain in the statute book and as no new rules or regulations have been framed and as the application of the

provisions of the NCLAT Rules, 2016 have not been made applicable or extended to appeals filed under the Act of 2002, reference or reliance can only be made to the Rules of 2009 and the Regulations of 2010.

7. Today, none appeared for the Appellant. The defects noted by the Scrutiny Section have still not been cured by the Appellant, in spite of several emails and phone calls. An email dated 10.11.2017 from Dr. S. Krishnamurthy stated to be the counsel for the Appellant has been placed before me in which it is alleged that the former is laid up due to certain medical complications and hence a request for adjournment is seen made.

8. As the counsel is stated to be laid up, in the interest of justice, one last opportunity is granted for curing the defects. The Appellant or his authorised representative may appear in person before the Registry and cure the defects by 18.11.2017. In case the defects are not cured by the said date, the matter shall stand listed before the Hon'ble Appellate Tribunal on 20.11.2017.

(C.S. Sudha)
Registrar