
(2008) 02 P&H CK 0154
In the Punjab And Haryana At Chandigarh

Pawan Goel

APPELLANT

Vs

KMG Milk Food Ltd. and Others

RESPONDENT

Date of Decision : 22-02-2008

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 33, 34
COMPANIES ACT, 1956 — Section 287, 397, 398, 483
Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 128
Limitation Act, 1963 — Section 10, 10F, 11, 12, 13

Citation : (2008) 142 CompCas 441 : (2008) 2 CompLJ 213 : (2008) 149 PLR 98 : (2009) 89 SCL 121

Hon'ble Judges : Permod Kohli, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Permod Kohli, J.—The validity of the order dated November 24, 2006, passed by the Principal Bench of the Company Law Board, New Delhi, in C. P. No. 114 of 2006 and C. A. No. 428 of 2006, has been questioned in this company appeal. At the time of filing the appeal, an application (C. M. No. 109 of 2007) was filed by the appellant u/s 5 of the Limitation Act, 1963, seeking condonation of delay of 140 days in preferring the appeal against the impugned order before this Court. However, subsequently, another application C. M. A. No. 114 of 2007 has been filed on May 21, 2007, u/s 14 of the Limitation Act, 1963, seeking exclusion of time during which the applicant-appellant was pursuing the appeal before the hon'ble Delhi High Court. Further, prayer was made in paragraph No. 10 of this application for withdrawal of Misc. Application No. 109 of 2007, in view of the filing of fresh application u/s 14 of the Limitation Act. It may be noticed here that C. M. No. 109 of 2007 u/s 5 of the Limitation Act and the accompanying appeal were presented before this Court on May 15, 2007. Upon notice, respondents Nos. 1 and 2 who are the contesting respondents have filed their detailed objections and opposed the application.

2. Both the sides made their detailed submissions on the question of limitation. It may be useful to briefly notice the circumstances delaying the filing of the present application and the appeal before this Court.

3. The appellant, herein, filed company petition under Sections 397 and 398 of the Companies Act, 1956, before the Company Law Board being C.P. No. 114 of 2006 and also C. A. No. 428 of 2006, wherein interim direction was sought which has been declined vide order impugned dated November 24, 2006. An appeal u/s 10F of the Companies Act, 1956, against this order was filed in the hon''ble Delhi High Court being Co. A. (SB) No. 2 of 2007 accompanied with C. A. No. 183 of 2007 on February 17, 2007. The matter was taken up on February 19, 2007, and an objection was raised regarding jurisdiction of the hon''ble Delhi High Court to deal with the matter. The case was, accordingly, adjourned to April 16, 2007 and on the said date, the appellant withdrew the appeal as also application for condonation of delay filed before the hon''ble Delhi High Court.

4. The period for limitation prescribed u/s 10F is sixty days extendable to another sixty days for sufficient reasons. As the appeal before the Delhi High Court itself was beyond the period prescribed u/s 10F, an application was filed before the Delhi High Court u/s 5 of the Limitation Act seeking condonation of delay of 23 days in filing the appeal. On question of jurisdiction being raised counsel for the appellant withdrew the appeal and application and the hon''ble Delhi High Court passed the following order on April 16, 2007:

Learned Counsel for the appellant seeks to withdraw the appeal and application for condonation of delay to file the appeal and the application in the court having jurisdiction. Learned Counsel for the respondent does not object to it subject to taking all the objections available to him. The appeal and the application are dismissed as withdrawn with liberty to file it before appropriate court having jurisdiction.

5. Thereafter, the present appeal has been filed in this Court on May 16, 2007. Prayer in the present application is for exclusion of the period spent by the appellant-applicant in pursuing the proceedings before the hon''ble Delhi High Court. The proceedings before the hon''ble Delhi High Court commenced on February 17, 2007 and withdrawn on April 16, 2007. This period comes to 58 days.

6. Mr. Arun Kathpalia, advocate, appearing on behalf of respondents Nos. 1 and 2 has opposed the application on two counts:

(i) Section 14 of the Limitation Act has no application in appeal; and

(ii) the court has no jurisdiction to condone the delay beyond sixty days over and above the period of sixty days prescribed for filing the appeal u/s 10F.

7. Heard counsel for the parties.

8. The period of limitation for filing the appeal against the order of the Company

Law Board is prescribed u/s 10F which reads as under:

10F. Appeal against orders of the Company Law Board.-Any person aggrieved by any decision or order of the Company Law Board (made before the commencement of the Companies (Second Amendment) Act, 2002) may file an appeal to the High Court within 60 days from the date of communication of the decision or order of the Company Law Board to him on any question of law arising out of such order:

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

9. The period of limitation prescribed for preferring an appeal is 60 days. The period, however, can be extended for a further period of 60 days in view of the proviso to Section 10F. It is relevant to note that the language of section prohibits the extension of period beyond 60 days as is evident from the expression "further period not exceeding sixty days".

10. In view of the language used in Section 10F, it has been argued on behalf of the respondents that the period of limitation for filing the appeal is sixty days from the date of the passing of the impugned order and it can only be extended up to another 60 days on sufficient cause being shown and not thereafter. Order impugned was passed by the Company Law Board on November 24, 2006 and sixty days period for filing the appeal expired on January 23, 2007 and if, further period of sixty days is added to it, the extended period also expires on March 24, 2007. Whereas, the appeal was preferred before this Court on May 15, 2007. There is further delay of 53 days beyond 120 days prescribed u/s 10F of the Act. It is admitted case of the parties that when the appeal was initially filed before the hon"ble Delhi High Court, it was filed beyond initial period of sixty days which expired on January 23, 2007 and the appeal was thus, delayed by 25 days, though, it was mentioned in the application before the hon"ble Delhi High Court that the appeal was delayed by 23 days. Even when, the appeal was withdrawn from the hon"ble Delhi High Court on April 16, 2007, another period of 30 days has been consumed in filing the appeal before this Court. There is nothing on record or in the present application to explain the period between the date of withdrawal and filing of the appeal before this Court.

11. The first question that needs consideration is whether the period spent in pursuing the appeal before the hon"ble Delhi High Court can be excluded in terms of Section 14 of the Limitation Act. Section 14 of the Limitation Act reads as under:

14. Exclusion of time of proceeding bona fide in court without jurisdiction.?(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is

prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in rule 2 of Order 23 of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of Sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule 1 of that order where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature.

12. From the language of Section 14 (1) and (2) itself it appears that it applies to the suits and applications, respectively. Based upon this language, it has been argued on behalf of the respondents that the period spent in the Delhi High Court in pursuing the appeal before the wrong forum/court cannot be excluded. Both sides have referred various judgments. In *Sudama Rai and Others Vs. Bisheshar Prasad and Others*, , it was observed as under (page 93):

Section 14 of the Limitation Act, is not applicable to appeals. But u/s 5, Limitation Act, it is competent to a court to admit an appeal after the expiry of the period of limitation if the appellant satisfied the court that he had sufficient cause for not preferring an appeal within the prescribed time.

13. In *Munshi Vs. Punna Ram*, , a Division Bench of this Court considered the question of applicability of Section 14 of the Limitation Act to the appeals and held as under (page 231):

Though Section 14 of the Act in terms applies to suits and applications only and not to appeals, the circumstances contemplated in the section can justifiably be taken to constitute a "sufficient cause" within the meaning assigned to that phrase in Section 5 of the Act for purposes of appeals also, A contrary view taken by some High Courts in the earlier days is against the consensus of legal authority on this subject. The only distinction between the applicability of Section 14 in terms in the case of a suit or an application on the one hand, and the invocation of the principles of Section 14 in the case of an appeal on the other, is that whereas Section 14 confers a right on a plaintiff or an applicant to get the period during which the suit or application, was pending and prosecuted bona fide in the wrong court excluded as a matter of right, the remedy based on the principles of that provision u/s 5 of the Act in the case of an appeal is discretionary, and the court may condone the delay in filing an appeal in the correct court if the requirements of Section 14 appear to have been satisfied and on the facts and in the circumstances of the given case they are held to

constitute a sufficient cause in the sense in which that expression is used in Section 5 of the Act. Even if the considerations of good faith and due diligence which are necessary ingredients of Section 14 may not be applicable in their rigidity to proceedings u/s 5 of the Act, lack or want of bona fides can never justify the raising of an inference of sufficient cause in any circumstances.

14. To the contrary, Mr. Amit Rawal, advocate, appearing on behalf of the appellant has relied upon various judgments and referred to Vijay Brothers and Others Vs. Union of India (UOI) and Others, , wherein it was observed as under (page 385):

For the foregoing reasons, we are of the view that Section 14 of the Limitation Act is applicable to the proceedings under the Customs Act in respect of an appeal provided u/s 128 and the time spent in the High Court in the abortive attempt to invoke the jurisdiction of the High Court under article 226 of the Constitution and before the Supreme Court will have to be excluded. If we exclude the time, there can be no doubt that it was within the period of six months. The bona fide of the appellants in pursuing the remedy under article 226 of the Constitution was never in dispute. In fact, the writ petition itself was filed within the period of three months from the date of the service of the order and there can be no doubt that it is in the view that the order was without jurisdiction they sought to invoke the jurisdiction of the High Court under article 226 of the Constitution before filing an appeal and not to bypass the appeal as such.

15. In *Khilloni v. Municipal Committee* [1995] 1 PLR 643, it was observed:

The appellant while filing the appeal in the court of district judge made prayer for condonation of delay in terms of Section 5 and for exclusion of time for bona fide prosecuting the appeal u/s 14 of the Limitation Act. Section 14 of the Limitation Act specifically deals with such a situation. It permits exclusion of time of proceeding bona fide in a court without jurisdiction. It has not been suggested by the respondent that the appellant had been at any stage negligent or careless. This beneficial provision contained in Section 14 of the Limitation Act is in fact intended to help the persons who under mistaken belief had been prosecuting the matter but before a wrong forum. As per facts of the present case, I am of the view that the lower appellate court ought to have condoned the delay, entertained the appeal and decided the same on merits. The appellants cannot be said to be negligent, thus disentitling them to this limited relief of hearing an appeal.

16. In *Somnath Banerjee and Others Vs. Vivek Salvi and Others*, , it was observed (page 368):

In the case at hand, it is not disputed that the appellants engaged lawyers to prefer appeals against the impugned order and these appeals were filed in a wrong court in accordance with the advice of their lawyers. It is also on the record that the respondents themselves also lodged caveat in that wrong court and that the said court also had no hesitation to admit those appeals after

hearing the lawyers for both the parties and also to keep the appeals on its file for all these days. If these appeals could get entries in this wrong court only because of the obviously wrong end/of negligent advice of the lawyers and also inaction and negligence on the part of the court, then it is difficult to understand as to why the appellants shall not be regarded to have made out sufficient cause for the condonation of delay resulting from such wrong institution. As already stated, our laws and forensic procedure compel a party to engage a lawyer in proceedings in courts and, therefore, the courts must see that the parties do not suffer because their lawyers have blundered.

17. In *M.P. State Co-operative Marketing Federation Ltd. v. Union of India* [2001] 3 RCR 330, it was observed:

It would thus appear from Section 14(1) of the Act that in computing the period of limitation for a suit, the time during which the plaintiff has been prosecuting with due diligence another civil proceeding has to be excluded. As noticed earlier, in the instant case, the appellant has filed a petition for claim and was thus prosecuting his proceedings before the Deputy Registrar, Co-operative Societies, was not a civil suit, as has been contended by learned Counsel for the respondent, but the petition filed by the claimant appellant was certainly in the nature of civil proceeding. It may be noted that in order to avail the benefit u/s 14(1) of the "Act", it is not necessary that the proceedings being prosecuted by the plaintiff should be by way of civil suit only. The plaintiff is entitled to benefit of Section 14 of the Act and to exclude the period during which he had been prosecuting with due diligence another civil proceeding. It is not necessary that such a civil proceeding should be by way of civil suit only. In other words, if the plaintiff has been bona fide pursuing his remedy for vindication of his civil rights, such a proceeding shall be covered by the words "civil" proceeding as used in Section 14 of the Act.

18. In *BADLU AND ANR. v. SHIV CHARAN AND ORS.*, (1980) 4 SCC 401 , it was observed as under (page 402):

Moreover, it is well-settled that if a litigant is pursuing a bona fide civil proceeding with due diligence and in good faith in any appeal or revision he is entitled to the exclusion of the time taken in such proceeding. The combined effect of Sections 5 and 14 of the Limitation Act would, therefore, undoubtedly entitle the appellants to exclude the time taken by them while the appeal was pending before the Additional District Judge. In this view of the matter, it is manifest that the senior sub-judge was fully justified in condoning the delay and the High Court was, therefore, clearly wrong in allowing the appeal and set aside the judgment of the senior sub-judge on the ground that he had wrongly condoned the delay.

19. Based upon the ratio of the aforesaid judgments, it is contended that provision of Section 14 of the Limitation Act can be invoked where a party is found to be bona fide pursuing the remedy in a wrong forum/court.

20. From the ratio of judgments noticed above, it transpires that even if it is presumed that Section 14 of the Limitation Act is not attracted in appeals for the purposes of exclusion of period in pursuing the remedy in a wrong forum/court, the plea can validly constitute a sufficient cause for condoning the delay u/s 5 of the Limitation Act if the court accepts the same. In view of the ratio of the aforesaid judgments, I am of the considered view that the period spent in a wrong forum does constitute a sufficient cause and can form valid basis for condoning the delay u/s 5 of the Limitation Act subject to satisfaction of the court. Then a related question arises in this appeal whether Section 5 read with Section 14 of the Limitation Act can be invoked to condone the delay in view of the specific provision of Section 10F read with proviso which itself provides a period of limitation different than the period provided under Schedule to the Limitation Act, 1963. The question of sufficient cause has been taken care of under the proviso to Section 10F. Therefore, the period spent by the appellant in pursuing the appeal before the hon"ble Delhi High Court between February 17, 2007, to April 16, 2007, can be considered for exclusion from the total period of limitation prescribed under law, if it is found, that it constitutes sufficient cause in the facts and circumstances of the present case. Mr. Arun Kathalia, advocate, has further argued that where initial institution of the appeal is barred by time, litigant is not entitled to the benefit of Section 14 of the Limitation Act. According to him, the appeal before the Delhi High Court itself was barred by time and neither the Delhi High Court condoned the delay nor any such application for seeking condonation of delay has been preferred before this Court and C. M. No. 109 of 2007 filed u/s 5 of the Limitation Act has been withdrawn. It is, accordingly, contended that the appellant is not entitled to benefit u/s 14 of the Limitation Act, the appeal before the hon"ble Delhi High Court itself being beyond the prescribed period of limitation.

21. In addition to the above submission, he has further argued that the benefit of Section 14 is available only to a diligent litigant who has been pursuing the remedy bona fide and not in a callous manner. Section 14 itself provides for exclusion of time where the remedy has been pursued in a wrong court/forum with due diligence and in bona fide manner. From the interlocutory orders passed by the hon"ble Delhi High Court it appears that appeal was instituted on February 17, 2007 and it came up for consideration on February 19, 2007 and on that very day, the question of jurisdiction of the court was raised relying upon the judgment of the apex court in the case of Stridewell Leathers (P) Ltd. and others Vs. Bhankerpur Simbhaoli Beverages (P) Ltd., . The hon"ble Delhi High Court passed the following order:

Learned Counsel for the appellant has contended that the appeal is maintainable in the Delhi High Court as the cause of action has arisen at Delhi where the head office of the company is situated and where the resolutions impugned by the appellant appointing other directors were passed without notice to the appellant though even the quorum as contemplated u/s 287 of the Companies Act, 1956, was not complete. Learned Counsel for the appellant relies on Stridewell Leathers

(P) Ltd. and others Vs. Bhankerpur Simbhaoli Beverages (P) Ltd., , to contend that the High Court within whose jurisdiction the registered office of the company concerned lies only give rise to a part of cause of action. Learned Counsel for the caveator/respondents also relies on the same judgment to contend that since the registered office of the appellant-company is not situated within the jurisdiction of Delhi and is situated in Haryana within the jurisdiction of the Punjab and Haryana High Court, therefore, the appeal against the order impugned by the appellant shall not be maintainable u/s 10F of the Companies Act, 1956, in the Delhi High Court. Issue notice to the respondents. Mr. Bhalla accepts notice on behalf of the respondent and seeks time to file the reply. Reply be filed within four weeks. List on April 4, 2007.

22. The question of jurisdiction being raised based upon the Supreme Court judgment, the appellant continued to pursue the appeal and even when the formal application was filed raising objection to the jurisdiction of the court, the appellant filed his objections and insisted that the hon"ble Delhi High Court has the jurisdiction, though ultimately the appeal was withdrawn on April 16, 2007, with liberty to approach the court of competent jurisdiction. As a matter of fact, the appellant seems to have pursued his remedy before the hon"ble Delhi High Court in a callous and negligent manner. It was not that the question of jurisdiction was raised in routine, the objection of jurisdiction of the hon"ble Delhi High Court was based upon a judgment of the apex court in a similar matter and the judgment in case Stridewell Leathers (P) Ltd. and others Vs. Bhankerpur Simbhaoli Beverages (P) Ltd., , was also noticed by the hon"ble Delhi High Court in the interlocutory order dated February 19, 2007, even then the appellant chose to continue with the appeal till April 16, 2007. This conduct of the appellant is sufficient to deny him the benefit of Section 14 as he has not pursued the remedy with due diligence but in a callous and negligent manner, even if it is presumed that his initial approach was due to ignorance of law. Even otherwise, the appellant cannot claim the benefit of Section 14, he having filed the appeal before the hon"ble Delhi High Court beyond limitation. There is no affidavit of counsel who filed appeal before the Delhi High Court to show bona fide mistake regarding period of limitation as stated in the application u/s 5 of the Limitation Act filed before the Delhi High Court. Under similar circumstances a Division Bench of this Court refused to condone the delay in Classic Ispat Pvt. Ltd. Vs. Janak Steel Tubes Ltd., , wherein, it was observed as under (page 168):

On a perusal of the averments made in the application and the affidavit, it becomes clear that the applicant has miserably failed to show that the delay in filing of the appeal has been occasioned due to bona fide mistake. The affidavit of the director of the company cannot with any element of justification be made the basis for recording a finding that the advocate who filed Letters Patent appeal against the order of the learned company judge did so under a bona fide mistake. The applicant has not explained as to why the affidavit of the concerned counsel has not been filed. That apart, the averments made in paragraph 4 of the application do not even disclose the name of counsel who filed the Letters

Patent appeal. Likewise, the name of counsel who contacted the representative of the applicant has also not been disclosed. The date on which he contacted the applicant's representative has not been disclosed. It has also not been stated as to who gave instructions to which the advocate for the filing of the appeal u/s 483 of the Act. Why it took a long time of 10 days in the filing of the appeal has also not been explained. The failure of the applicant to provide these particulars shows that the cause shown for condonation of delay of 70 days is far from being bona fide. Therefore, we are unable to accept the plea of Shri Chibbar that the delay in filing of the appeal should be condoned.

23. I may also consider the next question whether the appellant is entitled to seek condonation of delay u/s 5 read with Section 14 of the Limitation Act or the period of limitation can be extended beyond sixty days over and above initial period of sixty days as prescribed u/s 10F of the Act.

24. Even though, condonation of delay u/s 5 of the Limitation Act is permissible without any limit provided the applicant is able to establish sufficient cause. It is settled law that once the court is convinced or satisfied regarding the existence of a sufficient cause, the length of a period becomes irrelevant. However, this proposition is attracted only if Section 5 is applicable. It has been contended on behalf of the respondents that Section 5 of the Limitation Act has no application in appeal u/s 10F. The contention is based upon the provision of Section 29(2) of the Limitation Act read with Section 10F which, inter alia, provides the period of limitation for filing the appeal and also for condonation of delay by virtue of the proviso thereto. Section 29(2) of the Limitation Act provides for application of the provision of the Limitation Act from Sections 4 to 21 to a special or local law unless their application is specifically excluded by special or local law which reads as under:

Section 29(2). Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.

25. There is no dispute that the Companies Act, 1956, is a special law. Under the normal circumstances, the provisions of the Limitation Act will have application to all appeals and applications under the Companies Act, unless a different period of limitation is prescribed. As noticed herein above, the company law itself has prescribed a period of limitation for filing the appeal and also for condonation of delay. Hence, condonation of delay for filing the appeal beyond the prescribed period of limitation is by virtue of the proviso to Section 10F. This proviso can be considered to be akin to Section 5 of the Limitation Act. However, the proviso imposes limitation for extension of time in filing the appeal beyond the

prescribed period of limitation, the expression used in Section 10F being "further period not exceeding sixty days". It has been argued by Mr. Rawal, advocate, on behalf of the appellant that the Companies Act does not exclude the application of Section 5 of the Limitation Act and notwithstanding the maximum period of sixty days for condoning the delay under proviso to Section 10F, delay can further be condoned by virtue of Section 5 read with Section 14 of the Limitation Act on sufficient cause being shown.

26. With a view to consider and appreciate the arguments in its right perspective, the object, purport and the scope of proviso to Section 10F needs to be examined. Exclusion can be implicit or explicit. It depends upon the language used in a particular statute. The intention can only be gathered from the expression contained in the statute. The proviso to Section 10F has created an absolute bar for extension of period of limitation beyond sixty days apart from the period of limitation of sixty days prescribed u/s 10F. The expression "not exceeding" does not permit any further extension and it seems that the true import, purport and construction of the proviso is to restrict the total period of limitation to 120 days, i.e., sixty days principal and sixty days by extension subject to existence of sufficient cause in a given case. Any other interpretation would amount to committing violence to the statute itself which is impermissible under law.

27. There are similar provisions under other statutes. One such provision is Sub-section (3) of Section 34 of the Arbitration and Conciliation Act, 1996, which is noticed hereunder:

34(3). An application for setting aside may not be made after three months have elapsed from the date on which the party making that application has received the arbitral award or, if a request had been made u/s 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

28. Scope of this provisions came up for consideration before the apex court in Union of India Vs. M/s Popular Construction Co., , wherein the court observed (pages 472 and 474):

The question which arises for determination in this case is whether the provisions of Section 5 of the Limitation Act, 1963, are applicable to an application challenging an award, u/s 34 of the Arbitration and Conciliation Act, 1996 (referred to hereafter as "the 1996 Act")....

As far as the language of Section 34 of 1996 Act is concerned the crucial words are "but not thereafter" used in the proviso to Sub-section (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section

29(2) of the Limitation Act, and would therefore bar the application of Section 5 of that Act. Parliament did not need to go further. To hold that the court could entertain an application to set aside the award, beyond the extended period under the proviso, would render the phrase "but not thereafter" wholly otiose. No principle of interpretation would justify such a result.

29. In another case *Gopal Sardar Vs. Karuna Sardar*, , while considering the provisions of the West Bengal Land Reforms Act, 1955, in the light of Section 29(2) of the Limitation Act, 1963, made following observations (page 265):

13. Section 8 of the Act prescribes definite period of limitation of three months or four months, as the case may be, for initiating proceedings for enforcement of right of pre-emption by different categories of people with no provision made for extension of application of Section 5 of the Limitation Act. When in the same statute in respect of various other provisions relating to filing of appeals and revisions, specific provisions are made so as to give benefit of Section 5 of the Limitation Act and such provision is not made to an application to be u/s 8 of the Act, it obviously and necessarily follows that the Legislature consciously excluded the application of Section 5 of the Limitation Act. Considering the scheme of the Act being self contained code in dealing with the matters arising u/s 8 of the Act and in the light of the aforementioned decisions of this Court in the case of *Hukumdev Narain Yadav Vs. Lalit Narain Mishra*, , AIR 1994 512 (SC) and *The Commissioner of Sales Tax, U.P., Lucknow Vs. Parson Tools and Plants, Kanpur*, , it should be construed that there has been exclusion of application of Section 5 of the Limitation Act to an application u/s 8 of the Act. In view of what is stated above, the non-applicability of Section 5 of the Limitation Act to the proceeding u/s 8 of the Act is certain and sufficiently clear. Section 29(2) of the Limitation Act as to the express exclusion of Section 5 of the Limitation Act and the specific period of limitation prescribed u/s 8 of the Act, without providing for either extension of time or application of Section 5 of the Limitation Act or its principles can be read together harmoniously. Such reading does not lead to any absurdity or unworkability or frustrating the object of the Act. At any rate in the light of the three-judge Bench decision of this Court in *Hukumdev Narain Yadav Vs. Lalit Narain Mishra*, , and subsequently followed in AIR 1994 512 (SC) , even though special or local law does not state in so many words expressly that Section 5 of the Limitation Act is not applicable to the proceedings under those Act, from the scheme of the Act and having regard to various provisions such express exclusion could be gathered. Thus, conscious and intentional omission by the Legislature to apply Section 5 of the Limitation Act to the proceedings u/s 8 of the Limitation Act, looking to the scheme of the Act, nature of right of pre-emption and express application of Section 5 of the Limitation Act to the other provisions under the Act, itself means and amounts to "express exclusion" of its satisfying the requirement of Section 29(2) of the Limitation Act.

30. From the dictum of the aforesaid judgments, it is abundantly clear that where particular statute does not apply to Section 5 of the Limitation Act

expressly or even impliedly in a special or local law itself, it shall be presumed that the exclusion is express. Section 29(2) of the Act not only excludes the application of Section 5 of the Limitation Act but also other sections from Sections 4 to 24 (inclusive). Thus, Section 14 also stands excluded from its application for purposes of either condoning the delay or exclusion of the period on the ground envisaged therein notwithstanding existence of sufficient cause. Thus, even if the period spent before the hon"ble Delhi High Court constitutes sufficient cause for extension of period u/s 5 read with Section 14 of the Limitation Act, these sections cannot be applied de hors proviso to Section 10F to extend the limitation beyond sixty days in addition to the original period of sixty days (total 120 days) for filing an appeal as proviso to Section 10F does not permit such extension. Applying this principle enumerated hereinabove and the discussion, the maximum period available to the appellant for preferring the appeal was sixty + sixty days, i.e., 120 days up to March 24, 2007, subject to the condition that the appellant has shown sufficient cause for condonation up to sixty days beyond the prescribed period of sixty days. As noticed above, the initial period of 60 days in filing the appeal u/s 10F expired on January 23, 2007 and the extended period under the proviso to Section 10F expired on March 24, 2007. Hence, even if the contention of the appellant is accepted that he calculated initial period of filing the appeal as 90 days and the part of the period spent in the Delhi High Court is also considered to be the sufficient cause, it cannot be extended beyond 120 days, i.e., March 24, 2007. The present appeal having been filed on May 16, 2007, is barred by time.

31. Even though, the application for condonation of delay/exclusion of period u/s 5 read with Section 14 of the Limitation Act has been dismissed. I have also considered the impugned order. The Company Law Board has simply refused to grant ad interim order restraining the directors of the respondent-company from acting as directors during the pendency of the company petition before the Company Law Board. Existence of question of law is sine qua non for filing an appeal u/s 10F. I do not feel that any such question of law has arisen in refusing the ad interim injunction. The appeal is otherwise also bereft of any merit.

32. Resultantly, the application u/s 14 of the Limitation Act and consequently the appeal are dismissed.

In the facts and circumstances of the case, there will be no order as to costs.