
(2019) 01 DEL CK 0505
In the Delhi High Court
Case No : CO.A(SB) No. 1 Of 2015

Rajat Malhotra

APPELLANT

Vs

M/S Weld Metals India Pvt. Ltd & Anr

RESPONDENT

Date of Decision : 23-01-2019

Acts Referred:

Companies Act, 1956 — Section 10F
Limitation Act, 1963 — Section 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24

Citation : (2019) 01 DEL CK 0505

Hon'ble Judges : Jayant Nath, J

Bench : Single Bench

Advocate : Mukul Gupta, Dr.Rakesh Gosain, Nipun Bhardwaj, Saurabh Kalia, Harshit Agarwal

Final Decision : Dismissed

Judgement

CA No.23/2015

1. This application is filed under section 10F of the Companies Act, 1956 seeking condonation of delay in filing the present appeal beyond the period of 60 days as provided under section 10F of the Companies Act 1956.
2. The case of the appellant is that the copy of the order dated 12.8.2014 was received by them on 25.8.2014. The appeal has been filed on 24.12.2014. There is delay of 60 days beyond the period of 60 days to file the present appeal.
3. In the application it is pleaded that settlement talks were going on between the parties and an attempt was made to resolve the matter. As the impugned order directed the appellants to pay the price of the shares of the respondent and also directed the respondent to pay liability of the company, it could be done after liquidating the company. Based on this the present application for condonation of delay has been filed.
4. Learned counsel appearing for the respondent states that the present appeal

has been filed against an order dated 12.8.2014 which was actually passed in a review petition. He submits that the original Company Petition was disposed of on 30.4.2014. Against the said order the appellant had filed the present review petition which was dismissed on 12.8.2014. Hence, he relies upon judgment of the Supreme court in *Municipal Corporation of Delhi vs. Yaswant Singh Negi*, 2013(5) SCALE 447 to contend that limitation would be from the date of the original dismissal of the appeal i.e. 12.8.2014. Being beyond a period of 120 days from the impugned order, this court has no power to condone the delay.

5. He further submits that the present appeal was filed only after the respondents have also filed an appeal against the impugned order on certain limited grounds. Further, the fact that the order was received by the appellant on 25.8.2014 itself is not manifest from a perusal of the records. It is stated that the judgment was dispatched on 22.8.2014 by speed post. If we take into account the date of receipt as 25.8.2014 the appeal has been filed exactly 120 days after passing of the impugned order. There is also nothing to show receipt of the impugned order was 25.8.2014. Hence, he states that the stated facts seeking condonation of delay are untrue.

6. In my opinion, there is a merit in the contention of the learned counsel for the respondents that the dates relied upon by the appellant are not reliable. In fact, in the application for condonation of delay, the appellant himself states that copy of the impugned order dated 12.08.2014 was received by him on or before 25.08.2014. In case, copy of the order was received after 25.08.2014, the delay in filing the appeal would not be condonable. Reference in this context may be had to section 10F of the Companies Act, 1956, which reads as follows:

"10.F. Appeals against the order of the Company Law Board.-Any person aggrieved by any decision or order of the Company Law Board may file an appeal to the High Court within sixty 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.]"

7. As per the above provision, an appeal can be filed within 60 days from the date of the communication of the order. Condonation of delay up to another maximum period of 60 days is permissible on showing sufficient cause. Hence, no appeal can lie against an order of the Company Law Board to this court under Section 10F of the Companies Act after 120 days.

8. In this context, reference may be had to the judgment of Punjab & Haryana High Court in *Pawan Goel vs. KMG Milk Food Ltd. & Ors.*, [2008] 142 Comp. Cas. 441 (P& H) which referred the judgment of the Supreme Court in *Gopal Sardar v. Karuna Sardar*: (2004) 4 SCC 252 and concluded that the maximum period available to the appellant for preferring an appeal to this Court under section 10F

of the Companies Act is sixty+sixty days i.e. 120 days, subject to the condition that the appellant has shown sufficient cause for condonation up to sixty days beyond the prescribed period of sixty days. The provisions of Sections 4 to 24 of the Limitation Act were said to have no application. The relevant portion of the said judgment reads as follows:-

"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 under Section 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 under Section 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."

The above judgment was upheld by the Supreme Court in SLP(C) 17522/2008 dated 16.4.2010. Hence, the plea of the appellant that they received the copy of the order on or before dated 25.08.2014 does not inspire confidence and cannot be believed. It appears to be an attempt to avoid the fact that the appeal was already barred by limitation.

9. That apart from, in my opinion, the grounds stated for seeking condonation of delay inspire no confidence. As per the application, it is claimed that appellant being the brother-in-law tried to resolve the matter out of court. It is pleaded that settlement talks between the parties ultimately failed due to the greed of respondent No.2 and hence, the appellant could not file the appeal within the statutory period. Hence, condonation of delay is sought. As noted, the grounds so stated inspire no confidence and the delay cannot be condoned on the said grounds.

10. I may also note that the Supreme Court in *Municipal Corporation of Delhi vs. Yaswant Singh Negi* (supra) held as follows:-

"25. Different situations may arise in relation to review petitions filed before a court or tribunal.

25.1. One of the situations could be where the review application is allowed, the decree or order passed by the court or tribunal is vacated and the (sic) appeal/proceedings in which the same is made are reheard and a fresh decree or order passed in the same. It is manifest that in such a situation the subsequent decree alone is appealable not because it is an order in review but because it is a decree that is passed in a proceeding after the earlier decree passed in the very same proceedings has been vacated by the court hearing the review petition.

25.2. The second situation that one can conceive of is where a court or tribunal makes an order in a review petition by which the review petition is allowed and the decree/order under review is reversed or modified. Such an order shall then be a composite order whereby the court not only vacates the earlier decree or order but simultaneous with such vacation of the earlier decree or order, passes another decree or order or modifies the one made earlier. The decree so vacated reversed or modified is then the decree that is effective for the purposes of a further appeal, if any, maintainable under law.

25.3. The third situation with which we are concerned in the instant case is where the revision petition is filed before the Tribunal but the Tribunal refuses to interfere with the decree or order earlier made. It simply dismisses the review petition. The decree in such a case suffers neither any reversal nor an alteration or modification. It is an order by which the review petition is dismissed thereby affirming the decree or order. In such a contingency there is no question of any merger and anyone aggrieved by the decree or order of the Tribunal or court shall have to challenge within the time stipulated by law, the original decree and not the order dismissing the review petition.

Time taken by a party in diligently pursuing the remedy by way of review may in appropriate cases be excluded from consideration while condoning the delay in the filing of the appeal, but such exclusion or condonation would not imply that there is a merger of the original decree and the order dismissing the review petition."

11. There is a merit in the contention of the respondents that the present appeal has been filed against the order by which the review petition filed by the appellants against the order dated 30.04.2014 was dismissed. The appellant herein seeks to also assail the original order dated 30.04.2014.

12. Keeping in view the above conduct of the appellant and the legal position, in my opinion, no grounds are made out to condone the delay in filing the application.

13. Application is dismissed.

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Since the application seeking condonation of delay in filing the appeal is dismissed, consequentially, the present appeal also stands dismissed.