
(2017) 02 BOM CK 0003

In the Bombay High Court

Case No : Company Appeal No. 43 of 2015 In Company Petition No. 35 of 2013

Santosh Kumar Hegde

APPELLANT

Vs

Parimala Hospitality Private Limited

RESPONDENT

Date of Decision : 24-02-2017

Acts Referred:

Companies Act, 1956 — Section 10F

Citation : (2017) 201 CompCas 569 : (2017) 140 SCL 615

Hon'ble Judges : R.D. Dhanuka, J.

Bench : Single Bench

Advocate : Mr. Neerav Merchant with Mr. Ishwar Ahuja, Mr. S.S. Lanke and Mr. Bharat Merchant i/b Thakordas and Madgavkar, Advocates, for the Applicant; Mr. Farhan Dubash with Mr. Praveer Shetty i/b RES Legal, for the Respondent

Final Decision : Dismissed

Judgement

R.D. Dhanuka, J.(Oral) - By this company application, the applicant (original appellant) seeks condonation of delay of 135 days in lodging the company appeal against the impugned order dated 27th March, 2014 passed by the Company Law Board. Mr. Dubash, learned counsel appearing for the respondent raises a preliminary issue that this Court has no power to condone the delay beyond the period of 60 days and that also provided sufficient cause for seeking condonation of delay is made out.

2. Learned counsel appearing for the applicant in support of this application submits that the impugned order was passed on 27th March, 2014. The applicant received the certified copy of the impugned order on 2nd April, 2014. The applicant lodged the company appeal on 17th October, 2014 before this Court. He submits that the applicant had severe medical condition and stress and was advised complete rest at home and was under the treatment of Dr. B.T. Kate, M.D. Consulting Physician. He submits that as a result thereof, the applicant could not give instructions to his advocate to ensure that the present appeal is filed within time.

3. It is submitted by the learned counsel for the applicant that the applicant had also suffered with parotid carcinoma and was admitted and operated at Nanavati and Tata Memorial Hospital during the said period. Learned counsel invited my attention to a medical certificate dated 18th October, 2014 issued by Dr.B.T. Kate, certifying that the appellant was under his treatment.

4. Insofar as the preliminary objection raised by the respondent is concerned, Mr.Merchant, learned counsel for the applicant submits that the applicant was prevented by sufficient cause from filing the appeal within the time prescribed under section 10-F of the Companies Act, 1956. He submits that several questions of law are involved in the company appeal filed by the applicant and thus this Court has ample power to condone the delay beyond the period of 60 days by exercising powers under section 5 of the Limitation Act, 1963. Learned counsel invited my attention to the judgment of the Supreme Court delivered on 4th January, 2017 in case of Patel Brothers v. State of Assam and Ors. (2017) 2 SCC 350 and in particular paragraphs 13 to 19. He submits that the Companies Act, 1956 is not a special Act and thus provisions under section 4 to 12 are not excluded. Reliance is also placed on section 29(2) of the Limitation Act, 1963.

5. Learned counsel also fairly invited my attention to the judgment of this Court delivered on 17th September, 2009 in case of Smt. Hetal Alpesh Muchhala v. Adityesh Educational Institute and Ors. (2009) 152 Comp Cas 75 (Bom) in Company Application No.843 of 2009 in Company Appeal (Lodging) No.48 of 2009, the judgment of this Court delivered on 11th March, 2014, in case of Jagdish Lal Gupta v. Tara Industries Limited, Mumbai and Ors. (2014) 183 Comp Cas 249 (Bom) in Company Application (Lodging) No.32 of 2013 and also the judgment of the Punjab and Haryana High Court in case of Pawan Goel v. Kmg Milk Food Limited and Ors. (2008) 142 Comp Cas 441 (P and H) delivered on 22nd February, 2008.

6. Insofar as the judgment of the Supreme Court in case of Patel Brothers (supra) is concerned, the Supreme Court has construed the provisions of section 29(2) of the Limitation Act, 1963 and section 84 of Assam Value Added Tax Act. It is held by the Supreme Court that the Court has to examine the provisions of special law to arrive at a conclusion as to whether there was legislative intent to exclude the operation of Limitation Act. It is held that if the intention of the legislature was to make section 5, or for that matter, other provisions of the Limitation Act applicable to the proceedings under the VAT Act, there was no necessity to make specific provision like section 84 thereby making only sections 4 and 12 of the Limitation Act applicable to such proceedings. It is held that the Court cannot interpret the law in such a manner so as to read into the Act an inherent power of condoning the delay by invoking section 5 of the Limitation Act, 1963, so as to supplement the provisions of the VAT Act which excludes the operation of section 5 by necessary implications.

7. This Court in case of Smt.Hetal Alpesh Muchhala (supra) has held that Company Court has no power under section 10-F of the Companies Act, 1956 to

condone the delay beyond the period of 60 days. While construing the powers under section 10-F of the Companies Act, this Court has adverted to various judgments of the Supreme Court including the judgment in case of Union of India v. Popular Construction Company, (2001) 8 SCC 470 and also construed the provisions of the Companies Act and the purpose and intent of enactment of section 10-F. It is held by this Court that the powers vested in the Court under section 10-F to condone the delay on sufficient cause being shown is directory and subject to the discretion vested in the Court. However, the maximum period to the extent of which such delay is capable of being condoned is mandatorily prescribed and not open to exercise of any discretion. The words "not exceeding" cannot be given any other meaning except "not more than" and "not beyond" or "not thereafter".

8. It is held that the words not exceeding 60 days would amount to express exclusion within the meaning of section 29(2) of the Limitation Act, 1963 and would therefore, bar the application of section 5 of the Limitation Act, 1963 to section 10-F of the Companies Act, 1956. It is held that to hold that the Court can entertain an application to set aside the decision / order passed by the Company Law Board beyond the extended period under the proviso to section 10-F of the Companies Act, 1956 would render the phrase "not exceeding 60 days" wholly otiose. It is held that the Companies Act being a special enactment, the legislature has consciously restricted the right of appeal under section 10-F of the Companies Act, 1956 only to questions of law so as to ensure that there is as far as possible an early finality to the issues and consequent redressal of grievances.

9. It is held by this Court that legislative intent as reflected from the amendments to the Companies Act, 1956 resulting in the constitution of the Company Law Board and the insertion of section 10-F providing for a limited appeal make it abundantly clear that the legislature intended to restrict the power of the Court to condone beyond the period exceeding 60 days and thus prescribed in a mandatory language as under :-

"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 60 days."

10. The judgment in case of Jagdish Lal Gupta (supra) has adverted to the judgment of this Court in case of Smt.Hetal Alpesh Muchhala (supra) and has reiterated the same view. The Punjab and Haryana High Court in case of Pawan Goel (supra) has taken a similar view.

11. In view of Companies Act, 1956 being a special statute and upon considering the language of section 10-F, in my view it is clear that the Company Court has no power to condone delay beyond the period of 60 days. The said provision provides for 60 days time to file an appeal against the order of the Company Law Board from the date of communication of the decision or order of the Company

Law on any question of law arising out of such order. The proviso to the said section clearly makes it clear that the Court has power to condone delay only upto the period of 60 days and only if the appellant makes out a sufficient cause for not filing the appeal within the extended period. The words "not exceeding 60 days" makes it clear that the power to condone delay upto the period of 60 days is specifically provided in the said section itself. The legislative intention is thus clear that the provisions of section 5 of the Limitation Act, 1963 are expressly excluded and are not applicable to section 10-F of the Companies Act, 1956. In my view the further period of sixty days provided in the proviso is a maximum grace period provided for condonation and is not part of period of limitation.

12. The statement of law declared by the Supreme Court in case of Patel Brothers (supra) and the judgment of this Court in case of Smt.Hetal Alpesh Muchhala (supra) and in case of Jagdish Lal Gupta (supra) clearly applies to the facts of this case. I am respectfully bound by the said judgments. Insofar as the submission of the learned counsel for the applicant that none of the judgments referred to aforesaid has considered the provisions for condonation of delay in a matter in which the question of law had arisen is concerned, there is no dispute about the proposition that the appeal under section 10-F of the Companies Act, 1956 against the order of the Company Law Board can arise and can be entertained by the Company Court only if the questions of law arises and not otherwise. The questions of law if any arises in Company Appeal however, can be considered only if such appeal under section 10-F is within the time prescribed under the provisions of section 10-F and only upon the Company Court condoning the delay upto the period of 60 days, if sufficient cause is made out by the appellant and not otherwise. In my view, even if the applicant makes out a sufficient cause for delay beyond the grace period of 60 days, the Court has no power to condone such delay. There is thus no substance in the submission made by the learned counsel for the applicant.

13. Insofar as the Doctor's certificate annexed at Exhibit "A" to the company application is concerned, in my view since this Court has no power to condone delay beyond the period of 60 days and admittedly in this case delay is 135 days, Doctor's certificate produced by the applicant in support of his case that he was prevented from sufficient cause from filing appeal within the period of 60 days is of no assistance to the applicant and no cognizance thereof can be taken by this Court.

14. In my view, the company application is barred by limitation provided under section 10-F of the Companies Act, 1956 which is a self-contained provision. The company application is accordingly dismissed.

15. In view of the dismissal of the company application, Company Appeal No.43 of 2015 does not survive and is accordingly dismissed. No order as to costs.