

Item No.5

(Pune Bench)

**BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE**

[Through Physical Hearing (with Hybrid Option)]

**INTERLOCUTORY APPLICATION (I.A.) NO.184 OF 2023 (WZ)
IN
APPEAL NO.27 OF 2023 (WZ)**

Spacebound Web Labs Pvt. Ltd.,
Through its Authorised Officer

.... Applicant

Versus

Goa State Pollution Control Board,
Through Member Secretary

.... Respondent

Date of hearing : 24.11.2023

**CORAM: HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER**

Applicant : Mr. Nitin Sirdesai, Senior Advocate, instructed by
And with Mr. Nikhil D. Pai, Advocate

Respondent : Mr. A.V. Pavithran, Advocate

ORDER

1. By this application (I.A.), the applicant has prayed for condonation of delay of 60 days in filing the present appeal, which has been preferred against the order dated 06.04.2023 passed by the respondent – Goa State Pollution Control Board (GSPCB) forfeiting the security deposit of Rs. Ten lakhs, which has been prayed to be quashed.

2. It is stated in this application that the impugned order/direction dated 06.04.2023 was received by the applicant on 18.04.2023. Thereafter, the applicant approached its Advocate in the month of May, 2023.

3. There was a PIL Writ Petition No.15 of 2023 pertaining to the present matter, pending before the Hon'ble High Court of Bombay at Goa

due to which the officials of the applicant/appellant were held up as the applicant was required to file detailed affidavit before the Hon'ble High Court. The impugned directions dated 06.04.2023 were dispatched by registered post letter dated 12.04.2023 by the respondent which were received at the office of the applicant at about 4 p.m. on 18.04.2023. Therefore, there is 60 days' delay in filing the present appeal.

4. From the side of the respondent – GSPCB, reply-affidavit dated 20.10.2023 has been filed to the present I.A., wherein it is submitted that the impugned order was communicated to the applicant by e-mail dated 06.04.2023, therefore, limitation would be reckoned from 17.04.2023 and thirty days' period would expire on 24.05.2023 and 90 day's period would expire on 07.07.2023 while this appeal is filed on 17.07.2023 beyond the period of 90 days, hence the same stands time barred. Further it is mentioned that the applicant/appellant has not come with clean hands as the applicant/appellant has filed an affidavit in Writ Petition No.2824/2022 in compliance before the Hon'ble High Court of Bombay at Goa disclosing details of the directors wherein details of the e-mail address of the applicant are mentioned.

5. In response to the show-cause notice issued by the respondent, on several times, communications were made with the respondent through e-mail. The respondent had answered the queries. Present applicant is one of the respondents i.e. respondent No.10 in the aforesaid PIL Writ Petition No.2824/2020. Therefore, he was fully aware and seized of the issue. No explanation has been given as regards the dates 06.05.2023 and 15.06.2023. Even otherwise the explanation given by the applicant is not reasonable. The applicant/appellant has adopted casual and negligent approach and has failed to make out sufficient cause for condonation of delay.

6. In the rejoinder dated 22.11.2023 filed by the applicant, it is stated that Rule 4(6)(a) of the Environment (Protection) Rules mandates that the directions issued under Section 5 of the Environment (Protection) Act have to be served in the name of the company at its registered office or principal place of business or place of business either through registered post or delivered in person at the registered office or principal place of business or place of business of the company. Therefore, it is clear that as per the Environment (Protection) Act, directions must have been served on the applicant/appellant through registered post and in compliance with that, the respondent dispatched the impugned directions dated 06.04.2023 on 12.04.2023, which were received by the applicant/appellant on 18.04.2023 at 15.50 hours. Had this procedure been not mandatory, the respondent would not have served a copy of the impugned order through registered post when the law requires the direction issued under Section 5 of the Environment (Protection) Act to be communicated in a particular manner, the same ought to have been strictly adhered to. The Environment (Protection) Act does not permit the service of direction through an electronic mail or e-mail and therefore, any service tried to be effected through e-mail should not be treated to be sufficient on applicant/appellant.

7. It is further stated in the rejoinder that the email address karan.singh@sunburn.in is not the email address belonging to the applicant company nor the email address mayank.manek@bookmyshow.com is the email address of any of the directors of the applicant company. The applicant company's email address is legal@bookmyshow.com, but the mail which has been addressed to the said email ID was not delivered to the applicant/appellant. Therefore, the service of the impugned order/directions should not be treated to be held sufficient on

06.04.2023 as is being pressed by the respondent, rather the same needs to be held served on 18.04.2023 when the impugned directions were served by registered post upon the applicant/appellant.

8. During arguments, the learned counsel for the applicant/appellant has drawn our attention to pages 272 and 273 of the paper-book wherein the e-mail is found to have been sent on the above mentioned email IDs. It is also pointed out that three attachments are shown to have been sent on these email IDs, but in fact, one attachment is found to have been attached below that. Therefore, he states that even the attachment, which was annexed with the said email cannot be treated to be a copy of the impugned order/directions to have been served upon the applicant/appellant.

9. To this argument, we made a query as to why he has raised this pleading that these e-mails have not been delivered to the applicant. The learned counsel concedes that he should not have raised this pleading of three attachments being sent and only one being actually found to have been attached with the mail.

10. In view of above facts, we deem it appropriate to give benefit of doubt to the applicant/appellant having received the impugned order/directions on 06.04.2023. It is likely that the said email may not have been delivered to the company on the said date, but it is apparent and admitted also by the learned counsel for the respondent that the respondent did send the impugned order by registered post on 12.04.2023 which was delivered to the applicant on 18.04.2023 in their office. Therefore, we deem it appropriate to treat 18.04.2023 to be the date on which the said order was delivered to the applicant/appellant and from that date, if we compute the period of 90 days, 17.07.2023 would be the last date within which the appeal could have been filed although making addition of 60 days' period at our discretion.

11. The ground set up for condonation of delay of sixty days that there was Writ Petition pending before the Hon'ble High Court of Bombay at Goa for which employees of the applicant/appellant were busy and could have no time to appear before this Tribunal, as the applicant/appellant was required to file an affidavit before the Hon'ble High Court. This being the cause for delay in filing the present appeal, which is sufficient one, we condone the delay and allow the present application (I.A.).

12. We direct the Registry to place Appeal No. 27/2023 (WZ) for admission on 05.12.2023 because the learned counsel for the respondent wants to file reply.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

November 24, 2023
I.A. No.184/2023(WZ)
npj