

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S).19486 OF 2017

P.RAM BHOOPAL & ORS.

APPELLANT(S)

VERSUS

PRAGNYA RIVERBRIDGE DEVELOPERS
LIMITED & ORS.

RESPONDENT(S)

O R D E R

The National Company Law Tribunal's (hereinafter referred to as 'NCLT') judgment was delivered on 13th March, 2017. We have been informed that 45 days from the date of this judgment, which is the last date for the period of limitation, expired on 27th April, 2017. In the Companies Act, 2013, a further period of 45 days is given subject to sufficient cause to be made out to condone the delay. This second 45 days period would have expired on 11th June, 2017. Admittedly, before the expiry of this date, the appellants had filed an appeal before the National Company Law Appellate Tribunal (hereinafter referred to as 'NCLAT') on 8th June, 2017 with an application for condonation of delay.

On 12th June, 2017, defects were pointed out by the Registry, in that certain pages of the appeal were found to be dim. Admittedly, within four days of 12th June, 2017 i.e. on 16th June, 2017, these defects were cured. Despite this, the NCLAT by the impugned judgment dated 21st

August, 2017 has found, on a consideration of Rule 26 of the NCLAT Rules of 2016, that the appeal would be out of time, in that the defects were cured after 11th June, 2016 i.e. beyond the second period of 45 days. Rule 26 of the aforesaid Rules states as under:-

"26. Endorsement and scrutiny of petition or appeal or document.-

(1) The person in charge of the filing-counter shall immediately on receipt of appeal or document affix the date stamp of the Appellate Tribunal thereon and also on the additional copies of the index and return the acknowledgment to the party and he shall also affix his initials on the stamp affixed on the first page of the copies and enter the particulars of all such documents in the register after daily filing and assign a diary number which shall be entered below the date stamp and thereafter cause it to be sent for scrutiny.

(2) If, on scrutiny, the appeal or document is found to be defective, such document shall, after notice to the party, be returned for compliance and if there is a failure to comply within seven days from the date of return, the same shall be placed before the Registrar who may pass appropriate orders.

(3) The Registrar may for sufficient cause return the said document for rectification or amendment to the party filing the same, and for this purpose may allow to the party concerned such reasonable time as he may consider necessary or extend the time for compliance.

(4) Where the party fails to take any step for the removal of the defect within the time fixed for the same, the Registrar may, for reasons to be recorded in writing, decline to register the appeal or pleading or document."

A perusal of Sub Rule (1) of 26 of the NCLAT

Rules would show that the Registrar, immediately on receipt of the appeal, has to affix a date and stamp of the Appellate Tribunal thereon after which a diary number has to be assigned for the appeal in question. This would indicate that the date of receipt of the appeal, with stamp affixed and diary number given, would be the date of lodgement of the appeal. Sub-Rule (2) also states that when such appeal is found to be defective, such appeal, after notice to the party, must be returned for compliance. No date is indicated by the Rules within which period this should be done. It is only if there is a failure to comply, within seven days from the date of return, that the same must then be placed before the Registrar, who may then pass "appropriate orders". The Registrar may under Sub-Rule (3), for sufficient cause, then return the said appeal for rectification or amendment, as the case may be, and may allow the parties concerned such reasonable time as he may consider necessary or extend the time for compliance, as the case may be. It is only when the party fails to take any such steps for the removal of the defects within the time fixed for the same, that the Registrar may, for reasons to be recorded in writing, decline to then register the appeal.

The scheme of Rule 26 would, therefore, show that the date of lodgement of a defective appeal is considered to be the date of filing of such appeal. If the defects are cured, then what must follow is the allotting of a proper

appeal number after the case diary number has been given. It is only when the needful is not done within the time period of seven days that the appeal is to be placed before the Registrar. The Registrar is then vested with the discretion to condone the period beyond seven days on sufficient cause being shown. He may do so on the facts of a given case or he may not. When he does condone the delay, the appeal must be numbered, and obviously must relate back to the date of initial lodgement. It is only when the party fails to take any steps for removal of the defects within time or the extended time fixed for the same that the Registrar may, for reasons in writing, ultimately decline to register the appeal.

On the facts of the present case, it is clear that within a period of seven days, the defect pointed out was cured. This being the case, it is clear that the initial date of lodgement of the appeal is the date on which the appeal should be considered as filed, even though an appeal number may be given to the appeal subsequently.

In this view of the matter, we are of the view that the NCLAT's judgment deserves to be set aside, and the appeal that was lodged on 8th June, 2017 must be considered to be within the extended 45 days period.

The NCLAT has also noticed that no sufficient cause was made out to condone the delay that falls within the second 45 days period. This is incorrect inasmuch as the appellant has pleaded that as a result of the death of

his uncle, the appellant was unable to process the appeal within the initial 45 days and that, therefore, he should be said to have made out sufficient cause to condone the delay of 42 days.

We are of the view that, on the facts in present case, such sufficient cause is, in fact, made out. Even on this ground, therefore, we set aside the NCLAT's judgment.

The appeal is allowed in the aforesaid terms.

Pending applications, if any, shall also stand disposed of.

.....J.
[ROHINTON FALI NARIMAN]

.....J.
[NAVIN SINHA]

NEW DELHI
4th December, 2017

ITEM NO.25

COURT NO.12

SECTION XIV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 19486/2017

P.RAM BHOOPAL & ORS.

Appellant(s)

VERSUS

PRAGNYA RIVERBRIDGE DEVELOPERS LIMITED & ORS.

Respondent(s)

Date : 04-12-2017 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN
HON'BLE MR. JUSTICE NAVIN SINHA

For Appellant(s) Mr. K.V. Vishwanathan, Sr. Adv.
 Mr. Annam D. N. Rao, AOR
 Mr. D. Pawan Kumar, Adv.
 Mr. Sidhant Buxy, Adv.
 Mr. A. Venkatesh, Adv.
 Mr. Rahul Mishra, Adv.
 Mr. Sudipto Sircar, Adv.
 Ms. Tulika Chikker, Adv.

For Respondent(s) Mr. C.U. Singh, Sr. Adv.
 Mr. Rajat Juneja, Adv.
 Mr. Sidharth Sethi, AOR

UPON hearing the counsel the Court made the following
O R D E R

The appeal is allowed in terms of the signed order.

Pending applications, if any, shall also stand disposed
of.

(SWETA DHYANI)
SENIOR PERSONAL ASSISTANT

(SAROJ KUMARI GAUR)
BRANCH OFFICER

(Signed order is placed on the file)