

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

I.A. No. 758 of 2023

In

Compensation Application No.1 of 2023

In

Competition Commission Case No.50 of 2014

**(Arising out of the Impugned Order dated 17.03.2017 passed by
the Competition Commission of India, New Delhi Bench in Case
No. 50 of 2014]**

IN THE MATTER OF:

Prem Prakash (Individual)

Industrial Area, Khurai Road Bina

Sagar – District Madhya Pradesh – 470113

Email ID: mmsharmacg@gmail.com

...Applicant

Versus

1. Competition Commission of India

9th Floor, Office Block – 1

Kidwai Nagar (East) New Delhi – 110023

Email ID: cpio@cci.gov.in

...Respondent No.1

2. The Director General

Central Public Works Department

Nirman Bhawan

New Delhi – 110001

Email ID: cpwd_dgw@nic.in

...Respondent No.2

3. The Principal Secretary

Madhya Pradesh Public Works Department

Government of Madhya Pradesh

Vallallabh Bhawan Mantralya

Bhopal Madhya Pradesh – 482004

Email ID: pspwd@mp.gov.in

...Respondent No.3

Present:

**For Appellant : Mr. M.M. Sharma and Mr. Ankit Singh Rajput,
Advocates**

**For Respondent : Ms. Shama Nargis, Dy. Director (Law) (CCI)
Ms. Rajdipa Behura, Mr. Philomon Kani, Ms.
Neha Dobriyal, Ms. Simrat Kaur Sareen, Ms.
Aishwarya Gupta, Advocates for CCI.**

ORDER
(Hybrid Mode)

[Per: Arun Baroka, Member (Technical)]

This is an Interlocutory Application under Section 151 of the Code of Civil Procedure, 1908 seeking waiving off the payment of Court fees in re-filing the Compensation Application against the order of the Competition Commission of India (hereinafter referred to as “CCI”) dated 17.03.2017 in No. 50 of 2014. Mr. Prem Prakash is the Sole Proprietor of Venus Testing and Research Laboratory (“Applicant”), who had filed Compensation Appeal No. 01 of 2022 (earlier application) arising out of the order dated 17.03.2017 passed by the Competition Commission of India (Respondent) in Case No. 50 of 2014 (Impugned Order) under Section 26(2) of the Competition Act, 2002 (“Act”). This Tribunal vide its order dated 27.07.2022 had dismissed the Compensation Application No. 01 of 2022 as withdrawn and had ordered as follows:

*“On behalf of the Appellant a prayer is being made for withdrawal of the Appeal since there are number of errors in the Memo of Appeal/Application. He seeks permission to withdraw the Application with liberty to present corrected Application. **The permission is granted. The Application stands dismissed as withdrawn with liberty to file corrected application/appeal.** It is clarified that the period consumed in pursuing the present proceeding shall be excluded while considering limitation.”*

2. It is contended by the Petitioner that Mr. Sumit Jain who was the Authorised Counsel and was representing the Appellant Mr. Prem Prakash

had defrauded him and without his instructions made the prayer to withdraw the compensation application. Mr. Sumit Jain represented himself as an advocate. Later it came to be known that he was neither an Advocate nor Chartered Accountant, Company Secretary or Cost Accountant. On coming to know about this, he engaged another Advocate. When the new Advocate went on to refile the Compensation Application in the Registry, it was informed by the registry that a fresh court fees of Rs. 3,00,000/- (Rupees Three Lakhs only) had to be paid as the previous Compensation Application No.01 of 2022 was dismissed as withdrawn. It is claimed by the Appellant that it was under the bona-fide belief that Mr. Sumit Jain is an Advocate and holds a license to practice, engaged him as his authorised counsel to present his case before the NCLAT. Mr. Sumit Jain was also engaged in other matters in this Tribunal as well as in Competition Commission of India. It is only from the order dated 22.07.2022 in Competition Appeal (AT) No. 27 of 2022 that it came to know that Mr. Sumit Jain had accepted during the hearing that he is neither an advocate nor Chartered Accountant, Company Secretary or Cost Accountant. And during this hearing since Mr. Sumit Jain knew the fate of all other Appeals, he withdrew the Compensation Application No. 01 of 2022 before the final order could be passed in Competition Appeal (AT) No. 27 of 2022. And he had withdrawn the Compensation Application without the instructions from the Appellant. To ask for the statutory fees of Rs.3 lakhs again for re-filing the same Compensation Application would be too harsh as it was withdrawn unauthorisedly and for no fault on his part.

3. The Appellant has relied upon the Hon'ble Apex Court judgment in ***Rafiq and Anr. Vs. Munshilal and Anr. (1981) 2 SCC 788***. Relying upon the Supreme Court judgment, the Appellant claims that rejection of the application is not justified as the party should not suffer from the inaction, deliberate, omission or misdemeanour of his agent i.e. the lawyer. The court finally held that we cannot be a party to an innocent party suffering injustice merely because his chosen advocate defaulted. It has also relied upon ***Sohanlalarya Vs. State of Madhya Pradesh 2019 SCC OnLine MP 3268***. In this matter, it is categorically held that for the fault of counsel party should not be made to suffer.

4. The 1st Respondent / Competition Commission of India in its reply submits that the present application has been filed with a view to take undue advantage of the judicial process and to waste the valuable time of this Tribunal. Competition Commission has given a brief background of the instant matter, which is relevant for the case. The Appellant runs physical and chemical material testing lab with the name Venus Testing and Research Lab. Madhya Pradesh PWD department has not accredited his lab on the ground that it has not been accredited by the National Accreditation Board for Testing and Calibration Laboratories (NABL). The Appellant claims that there are more than 100 accreditation bodies throughout the world and three accreditation bodies in India. However, such orders by which accreditation is being done by single accreditation body i.e. NABL is arbitrary, unreasonable and adversely affect the competition in the relevant market. The CCI vide its order dated 17.03.2017, held that the imposition of the above condition by

MPPWD & CPWD was in contravention of the provisions of Section 4(2)(a)(i) of the Competition Act. CPWD has modified the conditions since then. Also MPPWD has developed its own laboratories at circle level and the condition of 20% material testing through NABL accredited laboratories is no more mandatory. In view of the above, CCI submits that no prima-facie competition issue remained to be investigated and the case was closed.

5. The 1st Respondent / CCI claims that out of the above order dated 17.03.2017, Compensation Application No.1 of 2022 was filed by the Applicant through Mr. Sumit Jain, seeking compensation to the tune of Rs.9 Crores against the DG, CPWD and Rs.30 Crore against the Principal Secretary, MPPWD. The CCI submits that the applicant has put up a completely false defence with regard to Mr. Sumit Jain that he was not an advocate and he was under the belief that Mr. Sumit Jain was an Advocate. The CCI submits that Mr. Sumit Jain was a proprietor of an accreditation agency and he, in connivance with the applicant have filed two more applications before CCI Case No. 25 of 2020 and Case No.48 of 2021, one in the name of the Applicant and other in the name of son of the Applicant. Pursuant to which, orders dated 05.07.2021 and 24.02.2022 were passed by CCI, against which Competition Appeal (AT) No. 12 of 2021 and Competition Appeal (AT) No. 27 of 2022 were filed. All the aforesaid Applications and Appeals were filed by Mr. Sumit Jain. Competition Appeal (AT) No. 27 of 2022 was dismissed by this Tribunal vide order dated 29.07.2022 by imposing a cost of Rs.1 lakh on the applicant and also by directing the Registrar of this Hon'ble Tribunal to take appropriate steps as per law against Mr. Sumit Jain.

Competition Appeal (AT) No. 12 of 2021 was dismissed vide order dated 08.08.2022 and the Registrar of this Hon'ble Tribunal was directed to take appropriate legal steps against Mr. Sumit Jain.

6. The 1st Respondent / CCI submits that as per Rule 4(2) of the Competition Appellate Tribunal (Form and Fee for filing Competition Applications) Rules, 2009, every compensation application shall be accompanied by a fee with a maximum fee of Rs.3 lakhs. The amount demanded by the 'Registry' of this 'Tribunal', is in accordance with these 'Rules'.

7. Further, the 'Appellant', cannot rely on the case of Rafiq & Anr. (supra) as quoted by them as the case was dismissed for non-appearance by the Counsel and hence the Hon'ble Supreme Court had directed for restoration of the Appeal since the party cannot be made to suffer for non-appearance for the Counsel. In the present case, the Counsel, on the instruction of the Applicant appeared before this Hon'ble Tribunal and made specific submission for withdrawal of the case and hence the case of Rafiq & Anr. (supra) would not be applicable to the facts and circumstances of the present case. Further, in **Sohanlalarya Vs. State of Madhya Pradesh 2019 SCC OnLine MP 3268**, the case was dismissed for non-compliance of peremptory order. It was contended that due to inadvertence, default could not be cured within time. Hence, the case was directed to be restored by observing that a party should not be made to suffer for the fault of the counsel. But in the present case, the Applicant in collusion with Mr. Sumit Jain had committed

various irregularities and the case was withdrawn on the specific submission made before this 'Tribunal'.

Appraisal:

8. The Appellant claims waiver of payment of fees as per Rule 4(3) of the Competition Appellate Tribunal Rules, 2009, which is reproduced as below:

*"....(4) The Tribunal may, to advance the cause of justice and in suitable cases, **waive payment of fee or portion thereof, taking into consideration the economic condition or indigent circumstances of the petitioner** or appellant or applicant or such other reason, as the case may be, by an order for reasons to be recorded....."*

[EMPHASIS SUPPLIED]

9. The above-mentioned Rule provides for waiving the fee, taking into consideration the economic condition or indigent circumstances of the Appellant. Herein, it is claimed that the "Advocate" was not really an Advocate and he withdrew the Compensation Application without the instructions from the Appellant. Also relying upon the judgment of Hon'ble Apex Court in Rafiq & Anr. (supra) and also of the High Court of Madhya Pradesh in Sohanlalarya (supra) it is claimed that his 'fee', may be waived for filing the 'Appeal'.

10. In the first judgment of Rafiq & Anr. (supra) relied upon by the Appellant, it is noted that there was an ex-parte order of dismissal of 'Appeal', which was passed by the Hon'ble High Court on non-appearance of Appellant's Learned Counsel on the date of 'Hearing' and the application, was made by the Learned Counsel for 'Recalling the Order' and for permission to participate in the hearing of the 'Appeal', rejected on ground of unexplained

delay in presenting the Application to the Court. The Hon'ble Apex Court held that rejection of the Application was not justified as a 'Party', should not suffer for the 'inaction', 'deliberate', 'omission' or 'misdemeanour' of his agent i.e. the Lawyer. The case relied upon is distinguished in the sense that the Lawyer, did not appear and 'defaulted', but, in the instant case, he was very much present in the 'Hearing', and the Appellant, was also fully aware of the proceedings.

11. The 'Appellant', has also relied upon another judgment of Hon'ble High Court of Madhya Pradesh Sohanlalarya (supra), wherein it was held that for the fault of the Counsel, party should not be made to suffer. This judgment in turn relies upon Rafiq & Anr. (supra) and also another judgment of Hon'ble Supreme Court in the case of ***M.K. Prasad Vs. P. Arumugam 2001 (6) SCC 176***. This case is also distinguishable as in this case also it was the default on the part of the advocate. On the other hand, herein the Advocate was present during all the hearings and was vigorously pursuing not only in this Tribunal but also in Competition Commission of India and his association with the Appellant has been for very long.

12. Even assuming that the 'Appellant', was not aware of the fact that Mr. Sumit Jain, was not an 'Advocate' or 'Chartered Accountant', 'Company Secretary' or 'Cost Accountant', and he withdrew the 'Compensation Application', without instructions of the 'Appellant', 'waiver of fee', in re-filing the 'Compensation Application', has to be justified, as per the 'Rule 4(3) of the Competition Appellate Tribunal Rules, 2009', which provides for 'waiver', after

taking into consideration the 'economic condition' or 'indigent circumstances' of the Appellant. Having gone through the Appellant's submissions, this 'Tribunal', does not find any such 'economic condition' or 'indigent circumstances', which justifies the 'waiver of the fee'. Therefore, the 'Fee for Re-filing the Compensation Application', cannot be waived. Accordingly, I.A. No. 758 of 2023 in Compensation Application No. 1 of 2023 in Competition Commission Case No. 50 of 2014, for 'waiver of the court fees of Rs.3 lakhs for Re-filing the Compensation Application No. 01 of 2023 is dismissed.

[Justice M. Venugopal]
Member (Judicial)

[Arun Baroka]
Member (Technical)

11th March, 2024

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