

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL PRINCIPAL BENCH,
NEW DELHI**

Competition App. (AT) No. 64 of 2022 & IA No. 4909 of 2022

IN THE MATTER OF:

Nayan Agencies

...Appellant

Versus

CCI & Ors.

...Respondents

Present:

For Appellant : Mr. Kunal Tandon, Ms. Niti Jain, Adv

For Respondents : M M Sharma, Adv for CCI.

Pawan Sharma, Anuj Shah, Adv for R2

Pawan Reley, Akshay Lodhi, Simran Singh, Adv for R3

Shama Nargis, Dy. Director for CCI

Nikhilesh Kumar, Adv for R6

K.Tiwari, Gauri chand, Adv

O R D E R

Per : Justice Rakesh Kumar Jain (Oral)

24.08.2023 This appeal is directed against the order dated 17th March, 2023 passed by the 'Competition Commission of India' (for short 'The Commission') under Section 27 of the Competition Act, 2002 (for short 'The Act') in Case No.90 of 2016, imposing a penalty of Rs. 10 Lakh upon the Appellant.

2. The appeal has been filed along with an application bearing IA No. 4909 of 2022 invoking Rule 11 R/w Rule 31 of the NCLAT Rules, 2016 for the alleged delay of 09 days in filing the appeal.

3. At the time of preliminary hearing held on 23.12.2022, the following order was passed:

“At the very outset, it was informed by Ld. Counsel for the Appellant that some of the appeals arising out of the same impugned order are scheduled to be listed on 02.02.2023. He requested that this appeal may be listed side by side of those appeals.

Mr. Anuj Shah, Ld. Counsel appearing on behalf of Respondent No. 2 along with Mr. Davander Prasad, Dy. Director CCI pointed out that the present appeal has been filed belatedly, of course a petition for condonation of delay has been filed. He further informs that in at least one case which is scheduled to be listed on 02.02.2023 point of limitation has been kept open.

Accordingly, in the present appeal also limitation point can be kept open and it can be directed to be listed side by side of Competition Appeal (AT) No. 33 of 2022 which is scheduled to be listed on 02.02.2023.

Issue notice to remaining Respondents. Notices to go through speed post for which requisites and process fee must be filed by 06.01.2023. Rule is made returnable within 4 weeks.

Put up on 02.02.2023 side by side of Competition Appeal (AT) No. 33 of 2022 and other connected appeals.”

4. However, on 25.04.2023, the court has passed the following orders:

“Competition App. (AT) No. 53 of 2022

Proxy Counsel for appellant prays for an adjournment on the ground that the arguing counsel is in personal difficulty today and is unable to attend the court. On her request, adjourned to 20.07.2023. It is made clear that application for condonation of delay shall be taken up at the first instance

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Proxy Counsel for the appellant prays for an adjournment on the ground that the arguing counsel is in personal difficulty today and is unable to attend the court. Adjournment sought though is opposed but, in the interest of justice one last opportunity is granted to the Appellant to argue the matter. Adjourned to 20.07.2023. It is needless to mention that the application for condonation of delay shall be heard on the next date of hearing at the first instance.”

5. Counsel for the Appellant has submitted that the impugned order was passed on 17.03.2021 and the Appeal has been filed 01.12.2022. Although, it is submitted that as per Section 53 (b) (1) of the Act, the period prescribed for filing the appeal is 60 days and as per proviso to Section 53(b) (1), the said period can further be extended, in case, a sufficient cause is shown to the satisfaction of the Appellate Authority. However, according to the Appellant there is a delay of 09 days as it is submitted that the impugned order came to its knowledge on 23.09.2022 and the Appeal was filed on 01.12.2022. It is submitted that due to Covid-19, the Appellant shifted his permanent residence to a rental building due to the maintenance work going on in his

residence, therefore, could not receive any notice and communication from the Commission. It is also submitted that the Appellant suffered loss in business in January 2020, had to sell his shop and was unable to receive any communication.

6. The Appellant attributed his knowledge to the impugned order on 23.09.2022 through the bank officials when the Appellant approached the bank to close his current account and was told that the account could not be closed due to the notice of the Commission to freeze the account.

7. Notice in this application was issued to which reply has been filed.

8. Counsel for Respondent No.2 has submitted that there is a delay of 580 days approximately assuming that the certified copy of the impugned order was supplied to the Appellant on 20.03.2021 similar to the case of Respondent no.2 because the letter dated 18.03.2021 containing the certified copy of the impugned order was issued by Respondent No.1 to Respondent No.2. It is also submitted that the certified copy of the impugned order was served on both the parties through their respective counsels. Their claim that they learnt through the bank officials on 23.09.2022 is without any evidence.

9. We have heard counsel for the parties and perused the record.

10. Section 53(B) of the Act deals with the Appeal to the Appellate Tribunal and the same is reproduced as under:

“53B Appeal to Appellate Tribunal. —

(1) The Central Government or the State Government or a local authority or enterprise or any person, aggrieved by

any direction, decision or order referred to in clause [\(a\)](#) of section 53A may prefer an appeal to the Appellate Tribunal.

(2) Every appeal under sub-section (1) shall be filed within a period of sixty days from the date on which a copy of the direction or decision or order made by the Commission is received by the Central Government or the State Government or a local authority or enterprise or any person referred to in that sub-section and it shall be in such form and be accompanied by such fee as may be prescribed: Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of sixty days if it is satisfied that there was sufficient cause for not filing it within that period.

(3) On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the direction, decision or order appealed against.

(4) The Appellate Tribunal shall send a copy of every order made by it to the Commission and the parties to the appeal.

(5) The appeal filed before the Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal within six months from the date of receipt of the appeal.”

11. Section 53(2) of the Act provides that every appeal under sub-section (1) shall be filed within a period of sixty days from the date of the receipt of certified copy. However, the proviso to this section says that the Appellate Authority can still entertain the appeal after the expiry of sixty days if it is satisfied there was sufficient cause for not filing the appeal within the prescribed period.

12. The impugned order was passed on 17.03.2021 and the same was supplied to the counsel for the parties and also sent to the Appellant who is taking all lame of excuses of shifting of residence because it is without any evidence. A sweeping statement has been made in the application that due to Covid-19 the Appellant has shifted from his permanent residence to a rental building without giving any detail on which date he shifted from his permanent residence to the rental building even the address of the rental building is not given.

13. Section 53(b) provides that a period of 60 days is a good enough period for filing an appeal before this Tribunal against the order of the Commission but proviso further gives extension a period of limitation in case a sufficient reason is assigned to the satisfaction of the Tribunal.

14. The very fact that the Appellant is taking a plea that he came to know about the impugned order only on 23.09.2022 itself shown that it is a made up a story. Supposing the Appellant came to know about the impugned order on 23.09.2022 then why did he not file his appeal within the period of 60 days and got it delayed even thereafter.

15. We are satisfied that the Appellant has been causal in filing the appeal in this court within the time prescribed and has caused a huge delay of 580 days.

16. In view the aforesaid discussion we do not find any reason to allow this application and the same is hereby dismissed.

17. Since, the application for condonation of delay is dismissed, therefore, the present appeal is not duly constituted and the same is hereby dismissed as well.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

Raushan/Ravi