

2. The Appeal was filed on 24.01.2022. The Registry of this Tribunal scrutinised the defects in the appeal on 01.02.2022 and intimated the defects to the Appellant on the same day and returned the memo of appeal on 07.02.2022. At the first instance, as many as 10(ten) defects were pointed out by the Registry and intimated to Rajesh Kumar Bharti. The defect sheets prepared by the Registry on 01.02.2022 is reproduced as under:

Annexure-1 (Copy)

11

Defects Sheet**F.No 01.02.2022/NCLAT/UR/06416****National Company Law Appellate Tribunal****New Delhi**

Competition Appeal(AT) No., of 2021

e-filing number : 9910110/06416/2021

People's All India Anti-Corruption and Crime
Prevention Society

....Appellant / Petitioner

And

Usha International Ltd.

....Respondent

The noticed defects are as under:-

1. In e-filing portal NCLAT case title is defective write, 'Ors.'
2. Cause title is defective in whole appeal paper book write, '2022' instead of '2021'..
3. Separate index not filed..
4. Memo of parties not signed..
5. Fill in the blank at page no.-51, 53..
6. Pagination not done after page no.- 49, 333..
7. Please provide the undertaking Court fee stamp and welfare stamp on vakalatnama is not affixed..
8. Caveat clearance not filed..
9. Please ensure that the pagination is properly done in all the volumes and e-filing, especially the impugned order before re-submitting the appeal after curing the defects..
10. Please mark the bookmarking properly as per hard copy pagination..

You are requested to remove the defects and then refile within 7 days from date of receiving notification

Date of scrutiny: 01.02.2022

Date of intimation to the appellant: 01.02.2022

Mode of intimation to the appellant: 9013485315 , paiaacaps.org@gmail.com

Name of person intimated: Rajesh Kumar Bharti

Dealing Head: Jyoti Kumari

TRUE COPY

3. Thereafter, according to the Appellant the Appeal was re-filed on 24.05.2022. On the same day, the Registry scrutinized the memorandum of appeal and again found the same defects which were earlier found. The

defect sheets dated 24.05.2022 is reproduced as under:

12

Defects Sheet
F.No 24.05.2022/NCLAT/UR/06416
National Company Law Appellate Tribunal
New Delhi
Competition Appeal(AT) No.. of 2021
e-filing number : 9910110/06416/2021
People's All India Anti-Corruption and Crime
Prevention SocietyAppellant / Petitione
And
Usha International Ltd.Responden
The noticed defects are as under:-
1. In e-filing portal NCLAT case title is defective write, 'WOrs.W'.
2. Cause title is defective in whole appeal paper book write, '2022' instead of '2021'..
3. Separate index not filed..
4. Memo of parties not signed..
5. Fill in the blank at page no.-51, 53..
6. Pagination not done after page no.- 49, 333..
7. Please provide the undertaking Court fee stamp and welfare stamp on vakalatnama is not affixed..
8. Caveat clearance not filed..
9. Please ensure that the pagination is properly done in all the volumes and e-filing, especially the impugned order before re-submitting the appeal after curing the defects..
10. Please mark the bookmarking properly as per hard copy pagination..
You are requested to remove the defects and then refile within 7 days from date of receiving notification
Date of scrutiny: 24.05.2022
Date of intimation to the appellant: 24.05.2022
Mode of intimation to the appellant: 9013485315 , paiaacaps.org@gmail.com
Name of person intimated: Rajesh Kumar Bharti
Dealing Head: Daljeet Saharwat

TRUE COPY

ADVOCATE

4. Thereafter, the Appeal was re-filed on 13.06.2022 but again without curing the defects because all the aforesaid 10 defects were again noticed in the scrutiny dated 13.06.2022 and the Appeal memo was returned to the Appellant. The defect sheet dated 13.06.2022 has also reproduced below:

Defects Sheet
F.No 13.06.2022/NCLAT/UR/06416
National Company Law Appellate Tribunal
New Delhi
Competition Appeal(AT) No.. of 2021
e-filing number : 9910110/06416/2021

People's All India Anti-Corruption and Crime Prevention SocietyAppellant / Petitioner

And

Usha International Ltd.Respondent

The noticed defects are as under:-

1. In e-filing portal NCLAT case title is defective write, 'Ors.' instead of '2021'.
2. Cause title is defective in whole appeal paper book write, '2022' instead of '2021'.
3. Separate index not filed..
4. Memo of parties not signed..
5. Fill in the blank at page no.-51, 53..
6. Pagination not done after page no.- 49, 333..
7. Please provide the undertaking Court fee stamp and welfare stamp on vakalatnama is not affixed..
8. Caveat clearance not filed..
9. Please ensure that the pagination is properly done in all the volumes and e-filing, especially the impugned order before re-submitting the appeal after curing the defects..
10. Please mark the bookmarking properly as per hard copy pagination..

You are requested to remove the defects and then refile within 7 days from date of receiving notification
Date of scrutiny: 13.06.2022
Date of intimation to the appellant: 13.06.2022
Mode of intimation to the appellant: 9013485315 , paiaacaps.org@gmail.com
Name of person intimated: Rajesh Kumar Bharti

Dealing Head: Harpal Singh

TRUE COPY

ADVOCATE

5. Ultimately, the memo of appeal was re-filed on 19.09.2022. As per Rule 26 of the NCLAT Rules, 2016 (for short 'The Rules'), the defect is scrutinized in the office and the matter is placed before the Registrar to pass an appropriate order. Rule 26 of the Rules is reproduced 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 and stamp of the Appellate Tribunal thereon and also on the additional copies of the index and return the acknowledgement 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.”

6. Rule 26(2) provides that after the memo of appeal is returned and defects noticed in the appeal are to be cured by the Appellant within seven days from the date of return.

7. However, in the present case, the appeal which was filed on 24.01.2022, was returned with the defects on 01.02.2022 but it was refiled on 24.05.2022 with the same defects, further refiled on 13.06.2022 with the same defects and ultimately filed on 19.09.2022. The matter was thus put up before the Registrar of this Tribunal who passed an order on 10.10.2022 which read as under:

“This is an application to extend the time granted for curing the defects.

2. The facts of the case are that the Appellant filed the Memo of Appeal on 24.01.2022 and the Office after scrutiny of the memo of appeal on 01.02.2020, intimated the defects to the Appellant on the same day and returned the Memo of Appeal to the Appellant on 07.02.2022. The Appellant re-filed the Memo of Appeal on 19.09.2022. It is stated in the Interlocutory Application (IA) that delay caused due to unforeseeable

circumstances as one of the counsels of the Appellant had to go in judicial custody and then for removing various defects pointed out by the Registry. Hence, there is delay of 224 days in re-filing the Memo of Appeal, so the same may be condoned.

3. Heard learned Counsel appearing for the Appellant and perused the averments made in the IA as well as Office report.

4. The Appellant was required to re-file the Memo of Appeal within seven days from the date of intimation of the defects. However, the Appellant re-filed the Memo of Appeal with a delay of 233 days, hence, the case may be placed before the Hon'ble Bench for appropriate orders.

5. List the case before the Hon'ble Bench under the heading 'for admission with defect (fresh case).'

8. The Registrar found that there was 223 days' delay in re-filing the appeal and that it would be expedient to list the memorandum of appeal before the bench for an appropriate order as to whether, in the given facts and circumstances of the case, the delay in re-filing can be condoned or not?

9. Apropos, the Appeal was listed before the court. The Appellant filed an application bearing IA No. 3685 of 2022 for condonation of delay in which he has assigned a reason for not re-filing the appeal in time. The reason contained in para 4 & 5 which are reproduced as under:

"4.Unfortunately, due to unforeseeable circumstances, one of the counsels of the appellant had to go in judicial custody for 5

days and therefore could not refile the Appeal before the expiry of limitation period as extended by the Hon'ble Supreme Court in Misc. Application no. 21/2022 SMW (C) No. 3/2020 i.e. till 31.05.2022.

5. It is submitted that the counsel of the Appellant visited the registry for refiling of the Appellant with an application for condonation of delay in refiling on 09th June 2022. On refiling the Appeal, the registry informed that the days for computing delay has to be computed from the date of first scrutiny by the registry i.e., from 01.02.2022 and not from the expiry of the period of limitation as provided by the Hon'ble Supreme Court. As a result, the Appeal could not be re-filed on 09.06.2022."

10. This Application has been contested by the non-applicant/Respondent who have alleged that the application for condonation of delay in re-filing can only be condoned if the court is satisfied that there was a reasonable and justifiable cause for not re-filing the appeal within the prescribed time. In support of his submission, he has relied upon the five judge bench decision of this court rendered in the case V.R.Ashok Rao & Ors. Vs. TDT Copper Ltd. in IA No. 2095 of 2022 in Company Appeal (AT) (Ins) No. 780 of 2022 decided on 30.08.2022.

11. Counsel for the Applicant/Appellant has argued that though there is a delay in refiling but it was occurred because of the reason that one of the counsel, namely, Rohit Arora was taken into custody on 27.05.2022 i.e. after the appeal was re-filed on 24.05.2022 and after his released on 02.06.2022,

the Appeal could be re-filed on 13.06.2022 and therefore, the delay deserves to be condoned.

12. On the other hand, counsel for the Respondent has submitted that there has been a continuous default on the part of the Appellant in re-filing of the appeal which was first returned after the defects were noticed on 01.02.2022. The period of seven days provided in Section 26(2) for the purpose of re-filing had expired because the appellant took about more than three months' in re-filing as it has been done on 24.05.2022. It is further submitted that the appeal memo was returned on the same day i.e on 24.05.2022 to the Appellant which was re-filed on 13.06.2022 again almost taking a period of one month. Still on 13.06.2022 when it was returned, it was re-filed on 19.09.2022 after about three months. It is thus submitted that the appellant has been totally remiss in his act and conduct in re-filing the appeal and has taken the proceedings of the court for granted. It is also argued that the reason assigned by the Appellant before this Court as well as in the application filed for condonation of delay is concocted because there were as many as three counsels who had been appearing in this case and if one of the counsel, namely, Rohit Arora was arrested on 27.05.2022 and released on 02.06.2022 the application could have been re-filed by the other Advocates.

13. We have heard counsel for the parties and perused the record with their able assistance.

14. The issue involved in this application travels in a narrow compass as to whether the application for condonation of delay in re-filing of the appeal

has to be allowed only after assigning sufficient cause to the satisfaction of the Court and Whether there exists a sufficient cause for condoning the delay?

15. The answer to the above question is no longer *res integra* in view of the Five Judge Bench decision of this Tribunal rendered in V.R.Ashok Rao (Supra) in which one of the question was *“Whether the limitation prescribed for filing an appeal before this Appellate Tribunal under Section 61 of the Insolvency and Bankruptcy Code, 2016 or Section 421 of the Companies act, 2013 shall also govern the period under which a defect in the Appeal is to be cured and this Appellate Tribunal shall have no jurisdiction to condone the delay in refiling/re-presentation if it is beyond the limitation prescribed in Section 61 of the IBC or Section 421 of the Companies Act, 2013.”*

16. This question has been answered by the Tribunal which is reproduced as under:

“The limitation prescribed in filing an appeal under Section 61 of the Code or Section 421 of the Companies Act, 2013 shall not govern the period taken in an appeal for removal of the defects in refiling/re-presentation. Even if, there is a delay in refiling/ re-presentation which is more than the period of limitation prescribed for filing an appeal under section 61 of the Code and Section 421 of the Companies Act, 2013, the same can be condoned on sufficient justification.”

17. In view of the aforesaid, one thing is settled that in application for condonation of delay in refiling of appeal, the Applicant / Appellant has to

give sufficient reason for not re-filing the appeal within the time prescribed. In the present case, as we have narrated the facts hereinabove, the appellant has been totally casual in approaching this court time and again for the purpose of re-filing inasmuch as the defects have been shown for the first time on 01.02.2022 were not cured. In this regard, we may hasten to add that one of the objection was with regard to the cause title namely, Cause title is defective in whole appeal paper book write, "2022 instead of 2021". Even this was not corrected by the Appellant which speaks volumes about their act and conduct and disentitles them from seeking condonation of delay in the present application.

18. With the aforesaid observations, we are satisfied that there is no sufficient cause assigned by the Appellant for the purpose of condonation of delay in re-filing of the appeal. Consequently, the application bearing IA no. 3685 of 2022 is hereby dismissed.

Competition Appeal (AT) No. 46 of 2022

19. Since the application for condonation of delay in re-filing has been dismissed by us by an order of even date, 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)