**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CAPP No. 34 of 2014 (O&M)

Date of decision : 04.5.2015

Kabul Chawla .. Appellant

versus

CPI India Real Estate Ventures Limited and others .. Respondents

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Ashok Aggarwal, Senior Advocate with
Mr. Hemant Saini and Mr. Mukul Aggarwal, Advocates,
for the appellant.

Mr. Sunil Gupta, and
Mr. Anand Chhibbar, Senior Advocates with
Mr. Prashant Mishra, Mr. J. S. Bhatia, and
Mr. Gaurav Mankotia, Advocates,
for respondent no. 1- CPI India Real Estate Ventures Limited.

Rajesh Bindal, J.

1. This is an appeal under Section 10-F of the Companies Act, 1956 (for short, 'the Act') against the order dated 5.3.2014 passed by the Company Law Board (for short, 'the Board'), in CP No. 127 of 2013. Along with the appeal, an application under Section 14 of the Limitation Act, seeking condonation of delay of 142 days in filing thereof has also been filed.

2. At the very outset, Mr. Anand Chhibbar, learned senior counsel for respondent no. 1 raised preliminary objection regarding maintainability of appeal before this Court on the ground that the same is time barred. While referring to Section 10F of the Act, he submitted that it provides a period of 60 days for filing appeal and further period of 60 days for which the delay could be condoned. In support of his plea, reliance was placed upon judgment of Hon'ble the Supreme Court in *Union of India vs Popular Construction Co.* (2001) 8 SCC 470, judgment of this Court in *Pawan Goel*

vs KMG Milk Food Limited and others (2008) 142 Comp Cas 441 (P&H), judgment of Madras High Court in *Sivakumar Spinning Mills Private Limited represented by its Managing Director vs Shanmughavelayutham and others* 2009 (6) CTC 847, judgment of Andhra Pradesh High Court in *Manohar Lal Sharma vs Union of India and another* (2009) 152 Comp Cas 412 (AP), judgment of Bombay High Court in *Smt. Hetal Alpesh Muchhala vs Adityesh Educational Institute and others* (2009) 152 Comp Cas 75 (Bom) and judgment of Hon'ble the Supreme Court in *Chhattisgarh State Electricity Board vs Central Electricity Regulatory Commission and others* (2010) 5 SCC 23.

3. Learned counsel for the appellant submitted that no doubt, impugned order was passed by the Board on 5.3.2014 and the appeal has been filed in this Court on 24.9.2014. However, application seeking condonation of delay of 142 days in filing thereof has been filed. There are sufficient reasons for condoning the delay in filing the appeal as in terms of the legal advise received by the appellant initially, a writ petition was filed in this Court challenging the aforesaid order. However, later on finding that the writ petition was not maintainable, the present appeal was filed along with application for condonation of delay. Once the applicant-appellant was already before this Court within the period of limitation, may be by availing improper remedy, the bar as such contained in the provisions of the Act limiting period of condonation of delay will not apply. In such cases, this Court has ample inherent powers to condone the delay as there is nothing in the Act which bars the Court for exercising that power. He further submitted that when the appeal was filed, respondent no. 1 accepted notice in the appeal in Court which amounts to waiver of its right to raise the plea of limitation at a later stage.

4. In response to the contention raised by learned counsel for the applicant-appellant, learned counsel for respondent no. 1 submitted that the notice in the appeal was accepted in the Court as the counsel was appearing in other three connected appeals arising out of the same litigation. The counsel was not knowing that the appeal was delayed. After receipt of copy thereof, it was found that the appeal was filed beyond the period of limitation. Once the appeal was not maintainable, there is no question of

waiver of that right by respondent no. 1. The inherent powers can be exercised by the Court only if there is no specific provision under the Act dealing with the issue. In the present case, Section 10-F of the Act clearly provides the period of limitation for filing appeal and also the period for which the delay can be condoned.

5. Heard learned counsel for the parties and perused the paper book.

6. The preliminary issue which arises for consideration in the present appeal is whether the same deserves to be entertained after condoning the delay of 142 days in filing thereof?

7. Section 10-F of the Act, which deals with the filing of the appeal and the period of limitation is extracted below:-

> "Section 10-F.- Appeal against orders of the Company Law board, - Any person aggrieved by any decision or order of the Company Law Board (made before the commencement of the Companies (Second Amendment) Act, 2002) may file an appeal to the High Court within 60 days from the date of communication of the decision or order of the Company Law Board to him on any question of law arising out of such order:
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> Provided that the High Court may, if it is satisfied that the Appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days."

8. A perusal of the aforesaid provisions shows that 60 days period has been provided for filing an appeal to this Court against an order passed by the Board from the date of communication of the decision or order of the Board on any question of law arising therefrom. Proviso to Section 10-F of the Act provides that on a sufficient cause shown, the appeal can be permitted to be filed within 60 days thereafter. Meaning thereby the power to condone delay in filing the appeal has been limited to a maximum period of 60 days in the section itself.

9. In the present case, admittedly the copy of the impugned order dated 5.3.2014 was received by the appellant from the Board on the same day. The appeal has been filed before this Court on 24.9.2014 after 142 days' delay. The maximum period upto which an appeal can be filed in the Court even if filed late, is 120 days (i.e. 60+60 days). This Court cannot condone the delay beyond the period of 60 days. Even the plea raised by the appellant that earlier on account of ill advise, a writ petition was filed, hence, taking support of Section 14 of the Limitation Act the delay is to be condoned, but such a plea is not available to the appellant as Section 14 of the Limitation Act has no application in appeals.

10. The interpretation of provisions in different statutes providing limited period for condonation of delay in availing the remedy was considered by Hon'ble the Supreme Court in number of cases. In *Popular Construction Co.'s* case (supra), the issue being considered was application of provisions of Section 5 of the Limitation Act with reference to the period provided in Section 34 of the Arbitration and Conciliation Act, 1996, which provide that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months, it may entertain an application within a further period of thirty days, but not thereafter. The relevant paras thereof are extracted below:-

> "1. The question which arises for determination in this case is whether the provisions of Section 5 of the Limitation Act, 1963, are applicable to an application challenging an award, under Section 34 of the Arbitration and Conciliation Act, 1996 (referred to hereafter as "the 1996 Act").
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> 2. to 11. xx xx xx xx xx
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> 12. As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are 'but not thereafter' used in the proviso to sub-section (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar the application of Section 5 of that Act. Parliament did not need to go further. To hold that

> the court could entertain an application to set aside the award beyond the extended period under the proviso, would render the phrase 'but not thereafter' wholly otiose. No principle of interpretation would justify such a result."

11. While considering the aforesaid judgment of Hon'ble the Supreme Court in *Popular Construction Co.*'s case (supra) and subsequent judgment in *Gopal Sardar vs Karuna Sardar* (2004) 4 SCC 252, this Court in *Pawan Goel*'s case (supra), opined that the maximum period available to the appellant for preferring appeal to this Court is sixty+sixty days i.e. 120 days, subject to the condition that the appellant has shown sufficient cause for condonation up to sixty days beyond the prescribed period of sixty days and the provisions of Sections 4 to 24 of the Limitation Act have no application. The relevant para thereof is extracted below:-

> "30. From the dictum of the aforesaid judgments, it is abundantly clear that where particular statute does not apply to Section 5 of the Limitation Act expressly or even impliedly in a special or local law itself, it shall be presumed that the exclusion is express. Section 29(2) of the Act not only excludes the application of Section 5 of the Limitation Act but also other sections from Sections 4 to 24 (inclusive). Thus, Section 14 also stands excluded from its application for purposes of either condoning the delay or exclusion of the period on the ground envisaged therein notwithstanding existence of sufficient cause. Thus, even if the period spent before the Hon'ble Delhi High Court constitutes sufficient cause for extension of period under Section 5 read with Section 14 of the Limitation Act, these sections cannot be applied de hors proviso to Section 10F to extend the limitation beyond sixty days in addition to the original period of sixty days (total 120 days) for filing an appeal as proviso to Section 10F does not permit such extension. Applying this principle enumerated hereinabove and the discussion, the maximum period available to the appellant for preferring

> the appeal was sixty + sixty days, i.e., 120 days up to March 24, 2007, subject to the condition that the appellant has shown sufficient cause for condonation up to sixty days beyond the prescribed period of sixty days. As noticed above, the initial period of 60 days in filing the appeal under Section 10F expired on January 23, 2007 and the extended period under the proviso to Section 10F expired on March 24, 2007. Hence, even if the contention of the appellant is accepted that he calculated initial period of filing the appeal as 90 days and the part of the period spent in the Delhi High Court is also considered to be the sufficient cause, it cannot be extended beyond 120 days, i.e., March 24, 2007. The present appeal having been filed on May 16, 2007, is barred by time."

12. Similar view was expressed by Madras High Court in *Sivakumar Spinning Mills Private Limited,* Andhra Pradesh High Court in *Manohar Lal Sharma*, and Bombay High Court in *Smt. Hetal Alpesh Muchhala's* cases (supra).

13. The issue was thereafter considered by Hon'ble the Supreme Court in *Chhattisgarh State Electricity Board's* case (supra). It was with reference to filing of an appeal before Hon'ble the Supreme Court against order of Appellate Tribunal for Electricity. The period provided for filing of appeal in the Electricity Act, 2003, is 60 days from the date of communication of the order of the Tribunal. Proviso to Section 125 of the Electricity Act empowered the Court to entertain an appeal filed within a further period of 60 days in case sufficient cause is shown. Hon'ble the Supreme Court opined that any appeal filed beyond 120 days would be barred by limitation. The relevant paras thereof are extracted below:-

> "25. Section 125 lays down that any person aggrieved by any decision or order of the Tribunal can file an appeal to this Court within 60 days from the date of communication of the decision or order of the Tribunal. Proviso to Section 125 empowers this Court to

entertain an appeal filed within a further period of 60 days if it is satisfied that there was sufficient cause for not filing appeal within the initial period of 60 days. This shows that the period of limitation prescribed for filing appeals under Sections 111(2) and 125 is substantially different from the period prescribed under the Limitation Act for filing suits, etc. The use of the expression `within a further period of not exceeding 60 days' in the proviso to Section 125 makes it clear that the outer limit for filing an appeal is 120 days. There is no provision in the Act under which this Court can entertain an appeal filed against the decision or order of the Tribunal after more than 120 days.

26. The object underlying establishment of a special adjudicatory forum i.e., the Tribunal to deal with the grievance of any person who may be aggrieved by an order of an adjudicating officer or by an appropriate Commission with a provision for further appeal to this Court and prescription of special limitation for filing appeals under Sections 111 and 125 is to ensure that disputes emanating from the operation and implementation of different provisions of the Electricity Act are expeditiously decided by an expert body and no court, except this Court, may entertain challenge to the decision or order of the Tribunal. The exclusion of the jurisdiction of the civil courts (Section 145) qua an order made by an adjudicating officer is also a pointer in that direction.

27. It is thus evident that the Electricity Act is a special legislation within the meaning of Section 29(2) of the Limitation Act, which lays down that where any special or local law prescribes for any suit, appeal or application a period of limitation different from the one prescribed by the Schedule, the provisions of Section 3

shall apply as if such period were the period prescribed by the Schedule and provisions contained in Sections 4 to 24 (inclusive) shall apply for the purpose of determining any period of limitation prescribed for any suit, appeal or application unless they are not expressly excluded by the special or local law."

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31. In CCE and Customs v. Hongo India (P) Ltd. (2009) 5 SCC 791, a three-Judge Bench considered the scheme of the Central Excise Act, 1944 and held that the High Court has no power to condone delay beyond the period specified in Section 35-H thereof. The argument that Section 5 of the Limitation Act can be invoked for condonation of delay was rejected by the Court and observed: (SCC PP. 801-02, paras 30, 32 and 35).

> "30. In the earlier part of our order, we have adverted to Chapter VI-A of the Act which provides for appeals and revisions to various authorities. Though Parliament has specifically provided an additional period of 30 days in the case of appeal to the Commissioner, it is silent about the number of days if there is sufficient cause in the case of an appeal to the Appellate Tribunal. Also an additional period of 90 days in the case of revision by the Central Government has been provided. However, in the case of an appeal to the High Court under Section 35-G and reference application to the High Court under Section 35-H, Parliament has provided only 180 days and no further period for filing an appeal and making reference to the High Court is mentioned in the Act.
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> * * *

32. As pointed out earlier, the language used in Sections 35, 35- B, 35-EE, 35-G and 35-H makes the position clear that an appeal and reference to the High Court should be made within 180 days only from the date of communication of the decision or order. In other words, the language used in other provisions makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning the delay only up to 30 days after expiry of 60 days which is the preliminary limitation period for preferring an appeal. In the absence of any clause condoning the delay by showing sufficient cause after the prescribed period, there is complete exclusion of Section 5 of the Limitation Act. The High Court was, therefore, justified in holding that there was no power to condone the delay after expiry of the prescribed period of 180 days.

* * *

35. It was contended before us that the words "expressly excluded" would mean that there must be an express reference made in the special or local law to the specific provisions of the Limitation Act of which the operation is to be excluded. In this regard, we have to see the scheme of the special law which here in this case is the Central Excise Act. The nature of the remedy provided therein is such that the legislature intended it to be a complete code by itself which alone should govern the several matters provided by it. If, on an examination of the relevant provisions, it is clear that the

provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our considered view, that even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the court to examine whether and to what extent, the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation. In other words, the applicability of the provisions of the Limitation Act, therefore, is to be judged not from the terms of the Limitation Act but by the provisions of the Central Excise Act relating to filing of reference application to the High Court." (emphasis supplied)

32. In view of the above discussion, we hold that Section 5 of the Limitation Act cannot be invoked by this Court for entertaining an appeal filed against the decision or order of the Tribunal beyond the period of 120 days specified in Section 125 of the Electricity Act and its proviso. Any interpretation of Section 125 of the Electricity Act which may attract the applicability of Section 5 of the Limitation Act read with Section 29(2) thereof will defeat the object of the legislation, namely, to provide special limitation for filing an appeal against the decision or order of the Tribunal and proviso to Section 125 will become nugatory."

14. Similar view was expressed by Division Bench of Delhi High Court in FAO (OS) No.485-86 of 2011- *Delhi Development Authority vs M/s Durga Construction Company,* decided on 7.11.2013.

15. What can be summed up from the aforesaid authoritative enunciation of law on the issue by Hon'ble the Supreme Court and different High Courts is that where certain period has been specified in the special Act limiting powers of the Court to condone the delay, the same would amount express exclusion of Section 5 of the Limitation Act within the meaning of Section 29 (2) of the Limitation Act. The issue was considered by Hon'ble the Supreme Court with reference to the provisions contained in Section 34 of the Arbitration and Conciliation Act, 1996 where period of three months has been provided for filing application with further period of thirty days for which condonation of delay could be sought. The issue was also considered with reference to Electricity Act, 2003, where under Section 125 thereof 60 days time has been provided for filing appeal to Hon'ble the Supreme Court against the order passed by the Appellate Tribunal for Electricity with a further period of 60 days upto which it could be extended on being shown as sufficient cause. Any appeal filed beyond the maximum period prescribed in the special statutes will be barred by limitation. It cannot be disputed that the Companies Act is a special statute within the meaning of Section 29(2) of the Limitation Act. Section 14 of the Limitation Act has no application in appeals.

16. For the reasons mentioned above, the appeal having been filed after a delay of 142 days and in terms of Section 10-F of the Act, delay only upto 60 days could be condoned, the application for condonation of delay is dismissed.

17. Accordingly, the appeal is also dismissed.

04.5.2015 (Rajesh Bindal)
vs Judge

(Refer to Reporter)