

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**


IA 72 of 2018 in Co. Appeal No. 13/252(3)/NCLT/AHM/2017

Coram: **Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER JUDICIAL**
Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 11.09.2018**

Name of the Company: Prafulkunverba Kiritsingh Gohil
V/s.
H K Dave Ltd.

Section of the Companies Act: Condonation of Delay

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	MINI M. NAIR	Adv.	Applicant.	
2.				

ORDER

Advocate Mrs. Mini Nair is present for the applicant.

The Order is pronounced in the open court, vide separate sheet.

The IA 72/2018 is allowed.

The appellant to furnish a fresh copy of the amended appeal by carrying necessary amendment and to file in this court and also to serve a copy to the ROC, Ahmedabad.

List the main matter on 31.10.2018


**MANORAMA KUMARI
(MEMBER JUDICIAL)**


**HARIHAR PRAKASH CHATURVEDI
(MEMBER JUDICIAL)**

Dated this the 11th day of September, 2018

**National Company Law Tribunal
Ahmedabad Bench**

**I.A. No. 72 of 2018
in
Co. Appeal No. 13/252(3)/NCLT/AHM/2017**

In the matter of: -

Prafulkunverba Kiritsingh Gohil
Residing at C-104, Safal Parisar-2,
Gala Gymkhana Road,
South Bopal – 380 058.

... Applicant

Vs.

1. M/s. H. K. Dave Limited (full-fledged)
public Co. (Dissolved); having its registered
office at: -
Khargate, Bhavnager – 364 001
and
Branch office at:
4th Floor, D-Wing,
Mrudul Tower, Ashram Road,
Ahmedabad, Gujarat, India.

2. Registrar of Companies,
ROC Bhavan,
Opp. Rupal Park,
Nr. Ankur Bus Stand,
Naranpura,
Ahmedabad 380 013

.....Respondents

Order delivered on 11th September, 2018

**Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (Judicial)
Hon'ble Ms. Manorama Kumari, Member (Judicial)**

Appearance:

Ms. Mini Nair, Advocate for the Appellant. None for the Respondent.



ORDER

[Per: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (Judicial)]

1. The present Interim Application is filed by the Appellant/ Applicant, seeking for condonation delay found if, any, in filing of the present appeal before this bench under Section 252(1) read with Section 252(3) of the Companies Act, 2013. The main company appeal, was filed initially under Section 252(3) of the Companies Act, 2013. By this appeal, the appellant has sought permission for the restoration of the name of a dissolved company, e.g. M/s. H. K. Dave Limited in the Registrar of respondent no. (2), i.e. Registrar of Companies, Government of India.
2. In the present appeal, the de-listed company, M/s. H. K. Dave Limited, has also been impleaded as a party which, in fact, is not in legal existence as already stood deregistered. The Applicant/ Appellant in the present I.A. has submitted that he had filed a suit against the respondent company (now deregistered) before a competent Civil Court at Amreli, bearing Civil Suit no. 51 of 1997 and 52 of 1997 which is reported to have been filed in the year 1997, and is now still pending before the court of Civil Judge (SD), Amreli. It is further stated that above suits were further renumbered as





regular Civil Suite no. 315 of 2014 and regular Civil Suite no. 316 of 2014.

3. It is also a matter of record that the present applicant also filed another Special Civil Suite no. 83 of 1999 and 84 of 1999 challenging the registration of a Sale Deed allegedly executed by the respondent, wherein, he also filed an application for injunction; in which, the Learned Civil Judge, vide its order dated 30th June, 2000 was pleased to direct both the parties to maintain *status quo* on disputed property. It is submitted that these Suits have also been renumbered as regular Civil Suit no. 315 and 316 and are pending.

4. On the basis of above narrated facts of the case, the petitioner in the present application has pleaded such that, a *pursis* was filed by respondent company (i.e. **M/s. H. K. Dave & Company Limited**) on 19th July, 2016 through its Advocate stating *inter-alia* that the Respondent No. 1 company stood dissolved as per the Section 560(5) of the Companies Act, 1956, by the Registrar of Companies on 21st July, 2011, thus, he requested for dismissal of such suits pending against the company (now dissolved) because the



respondent company no longer remained remain in its legal existence.

5. Thus, in the light of above stated facts and circumstances of the case, the present Appellant/ Applicant took such plea by submitting that he came to know about the status of the respondent company only on 19th July, 2016; that, its name stood struck off in the register of the Registrar of Companies which lead him to file the present appeal before this bench seeking for restoration of the company's name in the register of the ROC; thus, as per him, the present company appeal is filed well within the limitation from the date of his knowledge and hence, the present appeal is maintainable before this tribunal, in alternate he also took such plea that in case some delay is found in filing of such appeal, it should be condoned under section 5 of the Limitation Act, 1963.

6. We have heard the arguments of Ms. Mini Nair, the Learned Counsel for the Applicant and perused the contents of the petition and considered alternate pleas as taken therein by the applicant, we are of the view that, plausible reasons are shown for condonation of delay. It is a well settled position in law that counting for limitation period starts from the date of knowledge for the purpose of filing of an Appeal

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/Application before a Court of Law. As in the present matter, it is undisputed fact that it came to the knowledge of the present Appellant / Applicant only on 19th July, 2016, that the Respondent company stood strike off. Thereafter, the present appeal was filed before this bench on 5th July, 2017. Hence, it is found to be filed well within the limitation.

7. Since in the main appeal, the Registrar of Company has earlier filed its representation on 7th December, 2017 but it did not take any specific objection on non-maintainability of the present appeal on the ground of limitation but stated that his office is unable to verify the status of present appellant as a creditor of the respondent company. Hence, the office of Registrar of Companies has submitted that this tribunal can pass appropriate order for restoration of the name of the company subject to certain conditions. This give such impression that the Central Government through the office of the ROC is having no specific objection on to the maintainability of the present appeal on the ground of limitation. Therefore, in our view, the delay found if, any, can very well be condoned by this court. So far as the objection on the status of appellant as Creditor of the Company is concerned, it can be dealt with and decided on merits, after hearing the counsel for both parties, thereafter such can be


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done only after the appeal is found to be filed well within limitation.

8. In the light of above stated facts and circumstances of the present case and with a view to meet end of justice, we feel that the present application IA-72 of 2018 to be considered positively and deserve to be allowed.

Therefore, it is held that the present appeal is found to be filed well within the limitation which starts from the date of first knowledge of the Appellant/ Applicant, i.e. 19.07.2016 and in case any contrary is proved before this court; then such delay, if, found to be caused deserves to be condoned in order to meet the end of justice so that, the present appeal can be heard and decided as per its merits.

9. With these observations, the IA No. 72 of 2018 is allowed and stands disposed of.
10. No order as to cost.


Ms. Manorama Kumari,
Member (Judicial)


Mr. Harihar Prakash Chaturvedi,
Member (Judicial)