

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
NEW DELHI BENCH COURT-V**

CA-169/C-V/ND/2019

In

CA (CAA) No. 128 (ND) of 2019

Under Sections **230-232** & 66 and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016

In the Matter of:

Venus Management Consultants Private Ltd.

C/o Achal Enterprises, Ground Floor 14, Ganesh Chandra Avenue, Chamber-9 Kolkata, West Bengal- 700013.

CIN: U74140WB2010PTC143058

..... Transferor Company

Crawford Securities Private Limited

Plot No. 105, Block-A, Wazirpur Group Ind Area,

New Delhi- 110052

..... Transferee Company

Order Delivered on: 17.03.2020

Coram:

Hon'ble Abni Ranjan Kumar Sinha, Member (J)

Hon'ble Mr. K.K. Vohra, Member (T)

Present:

For the Applicant: Mr Rajeev K Goel, Advocate

CA-169/C-V/ND/2019

Venus Management Consultants Private Ltd.



ORDER

Per K.K. Vohra, Member (T)

1. The present Application is filed jointly by the Transferor and Transferee Companies named above for restoration of the Merger Application under Section 424 (2) (G) Read with Rule 32 of the National Company Law Tribunal Rules, 2016 of the Companies Act, 2013 which was dismissed by this Tribunal on 15.10.2019 on grounds of default in appearance on behalf of the parties.
2. The Applicants submitted that they had filed a merger Application before this Tribunal on 5.09.2019 which was numbered as Company Petition 0710102/11970/2019. The said Application was filed by the authorized representative of the Applicants and they had received a notification through SMS that the first date of hearing would be on 13.09.2019. The Applicants were present on 13.09.2019 but they found that the matter was not listed on the said date.
3. The Applicants further submitted that the Merger Application was listed on 19.09.2019, 23.09.2019 and 15.10.2019 but they received no notification in this regard either by SMS or otherwise.
4. On 15.10.2019, the Application was dismissed for want of prosecution. The Petitioner approached the Hon'ble NCLAT praying for the restoration of Application. NCLAT passed an Order on 28.11.2019 as under,

"In dealing with such application, the Tribunal will not raise the issue of Limitation in regard to filing of Petition, provided such application for restoration is filed within one week from today."



5. He further submitted that in pursuance to the Order passed by the Hon'ble NCLAT, the Applicant filed a fresh merger Application on 04.12.2019 with Dairy No. 0710102/11970/2019 which is within one week from the date of the order of NCLAT, but the Applicant was advised to withdraw the same and directed to file the restoration Application and in doing so there was a delay of 15 days in filing the present Application. He further submitted that the said delay was neither intentional nor deliberate rather the same may be condoned.
6. In the light of the submissions raised on behalf of the Applicant when we have gone through the order passed by the NCLAT in Company Appeal No. (344 of 2019), we find that vide order dated 28.11.2019, the Hon'ble NCLAT directed the Applicant to approach the Tribunal for setting aside the order of dismissal on the ground of default in appearance of parties and seeking its restoration. The Hon'ble NCLAT further directed the Tribunal not to raise the issue of limitation in regard to filing of Application if the same was filed within a week from the Order of NCLAT.
7. When in the light of submissions raised on behalf of the Applicant, we shall consider the case in hand, we find that there is a specific direction given in the Order that the Tribunal shall not consider the point of limitation if the restoration Application is filed within one week. Therefore, the contention of the Ld. Counsel on behalf of the Applicant that due to inadvertence he refiled the fresh merger Application instead of filing the restoration Application, in our considered view is not liable to be accepted. Since, there is a specific direction for the filing of the Application within seven days therefore, the present Application is not within the time as fixed by the Hon'ble NCLAT.
8. At this juncture we have also liked to consider the prayer of the Applicant who in course of argument submitted that the delay may be condoned. Since a time was fixed by the Hon'ble NCLAT within which the Applicant

3

was required to file an Application therefore, in our considered view, this Tribunal is not inclined to extend the period for filing the restoration Application. Rather this Tribunal is of the view that the Petitioner may pursue the matter with NCLAT for the extension of time.

Accordingly, the Application stands disposed of.

Sd/-

K.K. Vohra

Member (Technical)

Sd/-

Abni Ranjan Kumar Sinha

Member (Judicial)