

THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

M.A. No.72/2018

In

Un-numbered Company Appeal (AT) No. ___/2018
(F.No.24/03/2018/NCLAT/UR/196)

In the matter of:

Mr. Soumitra Banerjee & Anr. Applicants/Appellants

Versus

Mr. Asher Ebrahim Melamed & Anr. Respondents

Appearance: Shri Sumit Srivastava, Advocate for the Applicants.

06.04.2018

This is an application (no provision of law mentioned) to extend the time granted for compliance given under sub-rule (2) to rule 26 of the NCLAT Rules, 2016 (hereinafter referred to as the Rules).

2. The allegation in the application is that the necessary papers had to be sent to the Applicants, who reside in Mumbai for rectification of the defects causing delay in presenting the Appeal. Hence, the prayer is to condone the delay of two days in presenting the Appeal after curing the defects.

3. The points that arise for consideration are: -

- i) Is the time given for complying the direction to cure the defects liable to be extended under sub-rule (3) to rule 26 of the Rules?
- ii) Reliefs.

4. **Point No. (i):** - Heard the learned counsel for the Applicants.

The aforesaid Appeal is against the order dated 09.02.2018 in CP No.106/397-398/CLB/MB/MAH/2013 of the Hon'ble NCLT, Mumbai Bench. As per sub-section (3) to section 421 of the Companies Act, 2013 (hereinafter referred to as the

Act) an appeal has to be filed within a period of 45 days from the date on which a copy of the impugned order is made available to the person aggrieved.

5. The appeal herein is seen presented before the Registry on 24.03.2018. The appeal when scrutinised on 26.03.2018 was found to be defective and hence on the same day the Applicants were informed of the defects with a direction to cure them and submit the same within a period of seven days. The period of seven days expired on 02.04.2018. However, the appeal has been submitted after curing the defects only on 04.04.2018. According to the Section there is a delay of two days' and hence the matter has been put up before me under sub-rule (2) to rule 26 of the Rules for appropriate orders.

6. The copy of the impugned order dated 09.02.2018 produced is only a xerox copy. In para-2 of the Appeal memorandum, the allegation is that the Applicants come to know of the impugned order only on 20.03.2018 and that they thereafter applied for a certified copy of the impugned order vide application dated 21.03.2018 and that they are yet to receive the copy. The Applicants herein were Respondents 1 and 2 in the Company Petition and they are seen to have been represented by a counsel. In such circumstances, it cannot be contended that they came to know about the order only on 20.03.2018. That being the position, the Office has rightly computed the period of limitation from 10.02.2018 and when so computed the period of 45 days for filing the Appeal would expire on 26.03.2018.

7. In the case on hand, the initial presentation of the appeal under Rule 22 on 24.03.2018 is within the period of limitation. However, the subsequent presentation after curing the defects on 04.04.2018 is apparently beyond the period of 45 days. It is true that the proviso to sub-section (3) to section 421 of the Act provides that the period of filing an appeal can be extended for a further period not exceeding 45 days. However, the power to extend the period provided under the proviso can be invoked only by the Hon'ble Appellate Tribunal.

8. Sub-rule (3) to rule 26 enables the Registrar to extend the time for compliance given under sub-rule (2) to rule 26. However, the Rules cannot override the provisions of the Act. The power under sub-rule (3) to rule 26 to extend the time

given for compliance can be exercised by the Registrar, provided it is within the period of 45 days referred to in sub-section (3) to section 421 of the Act.

9. In the instant case, as presentation of the appeal after curing the defects is beyond the period of 45 days, the time granted for compliance under sub-rule (2) to rule 26 cannot be extended by invoking the power under sub-rule (3) to rule 26. Therefore, the matter be placed before the Hon'ble Appellate Tribunal for appropriate orders. Point answered accordingly.

10. **Point No.(ii):** - M.A. No.72/2018 disposed of accordingly.

List the matter before the Hon'ble Appellate Tribunal on 09.04.2018.

(C.S. Sudha)
Registrar