

THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

M.A. No.75/2018

In

Un-numbered Company Appeal (AT) No. ____/2018
(F.No.21/03/2018/NCLAT/UR/190)

In the matter of:

Mr. Movva Vasu Rama Krishna & Anr. Applicants/Appellants

Versus

LUIT Infratech Pvt. Ltd. & Ors. Respondents

Appearance: None for the Applicants.

13.04.2018

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 there was delay in obtaining the certified copy of the impugned order. The Applicants reside at Guntur, Andhra Pradesh and hence time was consumed in engaging a lawyer in Delhi. Further, the defective papers had to be sent to the Applicants at Guntur, which also contributed to the delay. The delay is alleged to be neither intentional nor wanton. Hence, the prayer is to extend the time for compliance by seven days.

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):** - None for the Applicants.

The aforesaid Appeal is against the order dated 17.01.2018 (stated to be mistakenly typed as 17.02.2018 in the order) in C.A No.220/2017 in CP No.325/241/HDB/2017 of the Hon'ble NCLT, Hyderabad 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 21.03.2018. The appeal when scrutinised on 22.03.2018 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 29.03.2018. However, the appeal has been submitted after curing the defects only on 05.04.2018. According to the Section there is a delay of seven 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 certified free copy of the impugned order dated 17.01.2018 is seen made ready on 02.02.2018. The allegation in para-2 of the Appeal memorandum is that the impugned order passed on 17.01.2018 was communicated to the Applicants on 05.02.2018. However, there is no proof on record to substantiate the said allegation. Therefore, the office has rightly computed the period of limitation from 03.02.2018 and when so computed, the period of 45 days for filing the appeal would expire on 19.03.2018.

7. In the case on hand, the initial presentation of the appeal under Rule 22 on 21.03.2018 and the subsequent presentation after curing the defects on 05.04.2018 are 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.75/2018 disposed of accordingly.

List the matter before the Hon'ble Appellate Tribunal on 16.04.2018.

(C.S. Sudha)
Registrar