

THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

M.A. No.77/2018

In

Un-numbered Company Appeal (AT) No. /2018
(F.No.02/04/2018/NCLAT/UR/207)

In the matter of:

Magnon Solutions Pvt. Ltd. & Ors.

.... Applicants/ Appellants

Versus

The Registrar of Companies,
NCT of Delhi & Haryana & Anr.

.... Respondents

Appearance: None for the Applicants.

17.04.2018

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 due to power failure in NCLAT on 10.04.2018, the Applicants could not file the Appeal within the time granted and hence the delay of one day. The delay is alleged to be unintentional and solely due to unavoidable circumstances. Hence the prayer is to condone the delay of one day 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):** - None for the Applicants.

The aforesaid Appeal is against the order dated 16.02.2018 in C.P. No.16/124/ND/2017 of the Hon'ble NCLT, New Delhi 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 02.04.2018. The appeal when scrutinised on 03.04.2018 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 10.04.2018. However, the appeal has been submitted after curing the defects only on 11.04.2018. According to the Section there is a delay of one day in presenting the appeal after curing the defects and hence, the matter has been put up before me under sub-rule (2) to rule 26 for appropriate orders.

6. In para-2 of the appeal memorandum, it is alleged that the certified copy of the impugned order was received on 15.03.2018. However, the certified free copy of the impugned order produced is seen issued on 05.04.2018. Therefore, the office computed the period of limitation from 06.04.2018 and when so computed, the period of 45 days would expire on 20.05.2018. If limitation is computed from 16.03.2018, i.e., the next day of the receipt of the impugned order as alleged in the Appeal memorandum, then the period of 45 days would expire on 29.04.2018.

7. In the case on hand, the initial presentation of the appeal under Rule 22 on 02.04.2018 and the subsequent presentation after curing the defects on 11.04.2018 are well within the period of limitation of 45 days, even if the limitation is computed on the basis of the allegation in para-2 of the Appeal memorandum or on the basis of the date of issue of the free certified copy of the impugned order. Therefore, exercising the power conferred under sub-rule (3) to rule 26, the time granted under sub-rule (2) to rule 26 for curing the defects is extended. Point answered accordingly.

8. **Point No.(ii):** - M.A. No.77/2018 allowed.

List the matter before the Hon'ble Appellate Tribunal on 18.04.2018.

(C.S. Sudha)
Registrar