

THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

M.A. No.90/2018

In

Un-numbered Company Appeal (AT) No. ____/2018
(F.No.07/04/2018/NCLAT/UR/249)

In the matter of:

Suresh Kumar Bhutani

.... Applicant/Appellant

Versus

Union of India, Ministry of Corporate Affairs

.... Respondent

Appearance: Shri Sumesh Dhawan, Shri Rajiv Kumar and Ms. Tannya
 Baranwal, Advocates for the Applicant.

23.04.2018

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 delay was caused as the counsel's clerk had misplaced the file. The delay in re-filing the Appeal is alleged to be unintentional and beyond the control of the Appellant. Hence, the prayer is to extend the time for compliance by two 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):** - Heard the learned counsel for the Applicant.

The aforesaid Appeal is against the order dated 23.02.2018 in C.P. No.277/2018 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 07.04.2018. The appeal when scrutinised on 09.04.2018 was found to be defective and hence on 10.04.2018, 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 17.04.2018. However, the appeal has been submitted after curing the defects only on 19.04.2018. 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 certified copy of the impugned order dated 23.02.2018 produced is a paid copy, which is seen issued on 21.03.2018. Therefore, the Section has rightly computed the period of limitation from 24.02.2018 and when so computed the period of 45 days after excluding the time taken for obtaining the certified copy, i.e., 19.03.2018 to 21.03.2018, would expire on 12.04.2018.

7. In the case on hand, the initial presentation of the appeal under Rule 22 on 07.04.2018 is within the period of limitation. However, the subsequent presentation after curing the defects on 19.04.2018 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.90/2018 disposed of accordingly.

List the matter before the Hon'ble Appellate Tribunal on 25.04.2018.

(C.S. Sudha)
Registrar