

THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

M.A. No. 08 of 2017

In

Un-numbered Company Appeal (AT) No. /2017

In the matter of:

Span Biotronics Pvt. Ltd.

.... Applicant

Versus

Dr. Bhagwati Prasad

.... Respondent

Appearance: Shri Navdeep Baidwan, Advocate for the Applicant

02.08.2017

This is an application seen filed under Rule 11 (ought to have been filed under sub-rule (3) to Rule 26) of the NCLAT Rules, 2016 (hereinafter referred to as 'the Rules') for condoning the delay in re-submitting/re-presenting the appeal.

2. The allegation in the application is that the appeal which was presented on 06.07.2017, was returned with a direction to cure the defects within a period of 7 days. As the authorised representative of the appellant company was out of Mumbai and as he was back only on 24.07.2017, the defects could be cured and the appeal re-submitted/ re-presented only on 26.07.2017. Hence the present application for condonation of delay of 10 days in re-presenting the appeal.

3. The points that arise for consideration are: -

- i) Is the time 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 has been presented against the order dated 22.05.2017 in C.P No.16/397-398/CLB/MB/MAH/2016 of the Hon'ble NCLT, Mumbai Bench. The allegation in paragraph 2 (page 4) of the appeal memorandum is that the copy of the order was communicated to the party on 22.05.2017 itself. Sub-section (3) to section 421 of the Companies Act, 2013, (hereinafter referred to as the Act) says that every appeal under sub-section (1) shall be filed within a period of 45 days from the date on which the copy of the impugned order is made available to the person aggrieved. That being so the period of 45 days in this case expired on 06.07.2017.

5. The appeal in the present case was presented in the Registry under Rule 22 on 06.07.2017. The appeal on scrutiny was found to be defective and hence was returned on 11.07.2017 under sub-rule (2) to Rule 26 of the Rules with a direction to cure the defects within a period of 7 days. The period of 7 days expired on 18.07.2017. The appeal is seen re-presented/ re-submitted only on 27.07.2017, with a delay of about 9 days. Hence the section has put up the matter before me under sub-rule (2) to Rule 26 for appropriate orders.

6. Sub-section (3) to Rule 26 enables the Registrar to extend the time for compliance given under sub-rule (2) to Rule 26, if sufficient cause is shown. However, the Rules cannot override the provisions of the Act, which says that the appeal has to be filed within a period of 45 days from the date on which the impugned order is made available to the party. As per the Rules, an appeal is considered to have been registered and filed only when it reaches the stage of Rule 27. In this case on 06.07.2017 the appeal was presented under Rule 22 of the Rules, i.e. it was presented on the 45th day. However, it was re-presented/ re-submitted only on 27.07.2017 which is much beyond the period of 45 days as the allegation in paragraph 2 of the appeal memorandum is that the order was communicated to the party on 22.05.2017 itself.

7. It was argued on behalf of the applicant that the averment in paragraph 2 of the appeal memorandum that the impugned order was communicated to them on 22.05.2017 is actually a mistake and that they were provided with a copy of the order only on 05.06.2017 as stated in paragraph 6 of the appeal memorandum. Even if that be so, it is still beyond the period of 45 days as the 45 days' period expired on 20.07.2017. As noticed earlier the appeal was re-presented/ re-submitted only on 27.07.2017 which is about 7 days beyond the period of 45 days stipulated under sub-section (3) to section 421 of the Act.

8. The power of the Registrar to grant extension of time for compliance under sub-rule (3) to Rule 26 can be exercised if it comes within the period of 45 days

referred to in sub-section (3) to section 421 of the Act. Anything beyond that can be decided only by the Hon'ble Appellate Tribunal as provided under the proviso to sub-section (3) to section 421 of the Act.

9. In the instant case, as it goes beyond the period of 45 days referred to in sub-section (3) to section 421 of the Act, the matter is placed before the Hon'ble Appellate Tribunal for consideration and orders. Point answered accordingly.

10. **Point No.(ii)** – In the light of the above discussion, the matter be placed before the Hon'ble Appellate Tribunal.

List the matter before the Hon'ble Appellate Tribunal on 4th August, 2017.

(C.S. Sudha)
Registrar