

THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

M.A. No. 09 of 2017

In

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

In the matter of:

Pawan Kumar Kanodia

.... Applicant

Versus

Kanodia Tex Industries Ltd. & Ors.

.... Respondents

Appearance: Shri Shekhar Gupta, Advocate for the Applicant

02.08.2017

The present application (no provision of law mentioned) has been filed for condoning the delay of 2 days in re-submitting/ re-presenting the appeal after curing the defects.

2. The allegation in the application is that the appeal which was presented on 18.07.2017, was returned on 19.07.2017 with a direction to cure the defects within a period of 7 days. The direction for re-submitting within a period of days could not be complied with as the applicant is a resident of Mumbai. The delay of 2 days in re-submitting / re-presenting the appeal is not deliberate or intentional and hence it is prayed that the delay of 2 days in re-submitting the appeal may be condoned.

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 NCLAT Rules, 2016 (hereinafter referred to as 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 03.05.2017 in C.P No.93/397-397/CLB/MB/MAH/2013 of the Hon'ble NCLT, Mumbai Bench. In paragraph 2 of the appeal memorandum it is alleged that the appellant received the impugned order on 12.06.2017. Sub-section (3) to section 421 of the Companies Act, 2013 (hereinafter referred to as the Act) says that an 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. The 45 days in this case expired on 27.07.2017.

5. The appeal in this case was presented before the Registry on 18.07.2017. The appeal on scrutiny was found to be defective and hence on 19.07.2017 it was returned to the party with a direction to cure the defects within a period of 7 days. The period of 7 days expired on 26.07.2017. The appeal was re-presented/ re-submitted on 28.07.2017 i.e. with a delay of 2 days.

6. Sub-rule (3) to Rule 26 of the Rules enable the Registrar to extend the time for compliance given under sub-rule (2) to Rule 26 of the Rules. 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 order is made available to the party. Proviso to sub-section (3) to section 421 of the Act empowers the Hon'ble Appellate Tribunal to entertain an appeal beyond the period of 45 days, i.e. another 45 days can be granted. But this power can be exercised only by the Hon'ble Appellate Tribunal.

7. The 45 days' period contemplated under sub-section (3) to section 421 of the Act expired on 27.07.2017. The appeal was re-presented/ re-submitted only on 28.07.2017 which is one day beyond the period of 45 days as contemplated under the aforesaid sub-section. Any delay beyond the period of 45 days can be condoned only by the Hon'ble Appellate Tribunal. The Registrar can exercise the powers under sub-rule (3) to Rule 26 only if it comes within the period of 45 days referred to in sub-section (3) to section 421 of the Act. Therefore, the matter be placed before the Hon'ble Appellate Tribunal. Point answered accordingly.

8. **Point No.(ii)** -

In the light of the above discussion, the matter be placed before the Hon'ble Appellate Tribunal for consideration and orders on the aforesaid aspect.

List the matter before the Hon'ble Tribunal on 04.08.2017.

(C.S. Sudha)
Registrar