

THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

M.A. No. 15 of 2017

In

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

In the matter of:

Venumbaka Vijaya Sai Reddi & Ors.

.... Applicants

Versus

Registrar of Companies,
Hyderabad, Andhra Pradesh & Telangana

.... Respondents

Appearance: Shri C.P.N. Karthik, Authorized Representative of the
Applicants

02.08.2017

This is an application (no provision of law mentioned) to condone the delay 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 17.07.2017 was defective and hence was returned to the applicants with a direction to cure the defects within a period of 7 days. The counsel for the appellants reside in Bangalore and hence there was delay in re-submitting/ re-presenting the appeal. Therefore, the prayer is to condone the delay and to take the appeal on record.

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 05.06.2017 in C.A. No.28/621A/HDB/2016 of the Hon'ble NCLT, Hyderabad Bench. According to the applicants, they received the impugned order on 09.06.2017. Sub-section (3) to section 421 of the Companies Act, 2013 (hereinafter referred to the Act) says that the appeal has to 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. In the present case, the period of 45 days expired on 24.07.2017.

5. The aforesaid appeal was presented before the Registry on 17.07.2017. The appeal on scrutiny was found to be defective and hence the applicants were informed of the defects on 18.07.2017. They were directed to cure the defects within a period of 7 days which expired on 25.07.2017. The applicants took back the defective appeal on 25.07.2017 and re-submitted/ re-presented the same after curing the defects on 31.07.2017 i.e. with a delay of 6 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, 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 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 17.07.2017 the appeal was presented under Rule 22 of the Rules. The period of 45 days as provided under sub-section (3) to section 421 of the Companies Act, 2013 expired on 24.07.2017. The appeal was re-presented/ re-submitted only on 31.07.2017 which is beyond the period of 45 days provided under the aforesaid sub-section.

7. 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. Any delay beyond the period of 45 days can be condoned only by the Hon'ble Appellate Tribunal.

8. 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.

9. **Point No.(ii)** - M.A 15/2017 disposed off accordingly.

10. 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