

THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

M.A. No.21/2017

In

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

In the matter of:

Hasmukhlal M Patel & Anr.

.... Applicants

Versus

Ambika Food Product Pvt. Ltd. & Ors.

.... Respondents

Appearance: Shri Shwetank, Advocate for the Applicants.

21.08.2017

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 Applicants are from Ahmedabad in Gujarat and so, time was taken for curing the defects. Therefore, the prayer is that the time taken for curing the defects and re-presenting/ re-submitting the Appeal may be extended in the interest of justice.

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 applicants.

The aforesaid Appeal has been presented against the order dated 17.05.2017 in T.P. No.10/397/398/NCLT/AHM/2016 (New) C.P. No.86/397/398/CLB/MB/2010 (Old) of the Hon'ble NCLT Ahmedabad Bench. According to the Applicants, they received the impugned order on 31.05.2017. Sub-section (3) to section 421 of the Companies Act, 2013 (hereinafter referred to as 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 instant case, the period of 45 days expired on 15.07.2017.

5. The aforesaid Appeal is seen presented before the Registry only on 31.07.2017, i.e., beyond the period of 45 days referred to above. The Appeal on scrutiny was found to be defective and hence the Applicants were informed of the defects on 01.08.2017 and they were directed to cure the defects within a period of seven days. The defective Appeal was taken back on 01.08.2017. The period of seven days granted for curing the defects expired on 08.08.2017. However, the Appeal after curing the defects was re-submitted/ re-presented only on 16.08.2017, i.e., with a delay of eight days. Hence, the scrutiny Section has placed the matter before me under sub-rule (2) to rule 26 for appropriate orders.

6. Sub-rule (3) to rule 26 enables the Registrar to extend the time given for compliance under sub-rule (2) to rule 26. However, the Rules cannot override the provisions of the Act. As stated earlier, sub-section (3) to section 421 of the Act says that the Appeal has to be filed within a period of 45 days from the date on which impugned order has been made available to the person aggrieved. Here, the period of 45 days expired on 15.07.2017. However, the Appeal is seen presented under rule 22 before the Registry only on 31.07.2017, i.e., with a delay of 16 days. Proviso to sub-section (3) to section 421 empowers the Hon'ble Appellate Tribunal to entertain an Appeal beyond the period of 45 days. However, this power can be exercised only by the Hon'ble Appellate Tribunal. 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. In this case, since it goes beyond the period of 45 days, the time granted for compliance cannot be extended and therefore, the matter is placed before the Hon'ble Appellate Tribunal for appropriate orders. Point answered accordingly.

7. **Point No.(ii):-** M.A. No.21/2017 disposed of accordingly.

List the matter before the Hon'ble Appellate Tribunal on 23.08.2017.

(C.S. Sudha)
Registrar