THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

M.A. No.32/2017
In
Un-numbered Company Appeal (AT) No.___/2017

In the matter of:

Pinakin Kharwar …. Applicant

Versus

M/s. Nagina Processors Pvt. Ltd. & Ors. …. Respondents

Appearance: Shri Shreyas Mehrotra, Advocate for the Applicant.

01.12.2017

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 Applicant is based out of Delhi and hence delay was caused in curing the defects. The delay is alleged to be neither intentional nor deliberate and therefore, the prayer is to condone the delay of seven days' in presenting the appeal after curing the defects.

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 20.09.2017 in T.P. No. 108/397-398/NCLT/AHM/2016 (New) C.P. No.76/397-398-CLB-MB/2015 (Old) of the Hon'ble NCLT, Ahmedabad 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 has been presented before the Registry on 13.11.2017. The appeal when scrutinised on 14.11.2017 was found to be defective and hence on the same day, the Applicant was informed of the defects with a direction to cure them and re-submit the same within a period of seven days. The period of seven days expired on 21.11.2017. However, the appeal has been submitted after curing the defects only on 28.11.2017 and as there is a delay of seven days, the Section has put up the matter before me under sub-rule (2) to rule 26 for appropriate orders.

6. As noticed earlier, the impugned order is dated 20.09.2017. The certified copy of the impugned order is seen issued on 21.09.2017. The allegation of the Applicant in paragraphs 2 as well as in 6 of the appeal memorandum is that he had received the impugned order on 28.09.2017. If this allegation is taken to be true, the period of limitation will have to be computed from 29.09.2017. The period of 45 days would then expire on 12.11.2017 (Sunday) and hence the presentation of the appeal on 13.11.2017 by the Applicant is proper and within time.

7. However, the allegation that the copy of the impugned order was received on 28.09.2017 does not appear to be correct as the seal in the envelope produced as proof of receiving the order shows the date to be 26.09.2017. If that be so, the period of limitation computed from 27.09.2017 would expire on 10.11.2017. The appeal presented on 13.11.2017 is therefore, delayed by 2 days. Hence, the initial presentation of the appeal under rule 22 is itself beyond the period of 45 days provided under the Act for filing an appeal.

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. Proviso to sub-section (3) to section 421 empowers the Hon'ble Appellate Tribunal to entertain an appeal beyond the period of 45 days. But 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.

9. In the instant case, the initial presentation of the Appeal as well as the subsequent presentation after curing the defects is beyond the period of 45 days.

Hence, 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.32/2017 disposed of accordingly.

List the matter before the Hon'ble Appellate Tribunal on 05.12.2017.

(C.S. Sudha)
Registrar