

THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

M.A. No.43/2017

In

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

In the matter of:

Sanchar Tele Systems Ltd. & Ors.

.... Applicants

Versus

ROC, NCT of Delhi & Haryana`

.... Respondents

Appearance: None for the Applicants.

14.12.2017

This is an application under Rule 11 of the NCLAT Rules, 2016 (hereinafter referred to as the Rules) to extend the time granted for compliance given under sub-rule (2) to rule 26 of the Rules.

2. The allegation in the application is that the counsel for the Applicants/Appellants was laid up and hence the reason why the defects could not be cured within the time granted. Therefore, the prayer is to condone the delay of three days in submitting 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):** - None for the Applicants.

The aforesaid Appeal is against the order dated 18.08.2017 in C.P. No.16/110/2017 of the Hon'ble NCLT, New Delhi 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 27.11.2017. The appeal when scrutinised on 28.11.2017 was found to be defective and hence on the

same day, the Applicants were informed of the defects with a direction to cure them and submit the same within a period of seven days. The period of seven days expired on 05.12.2017. However, the appeal has been submitted after curing the defects only on 12.12.2017 and hence, the Section has put up the matter before me under sub-rule (2) to rule 26 for appropriate orders.

6. The copy of the impugned order produced appears to be a xerox copy of the certified copy issued free of cost by the NCLT, which is seen issued on 28.08.2017. The case of the Applicants as pleaded in para-2 of the appeal memorandum is also that the order was communicated to them on 28.08.2017. That being the position, the limitation will have to be computed from 29.08.2017 and not from 19.08.2017 as done by the Scrutiny Section.

7. If limitation is computed from 29.08.2017, the period of 45 days would expire on 12.10.2017. The initial presentation of the appeal under Rule 22 is only on 27.11.2017, which is obviously beyond the period of 45 days provided under sub-section (3) to section 421 of the Act to file the appeal. It is true that the proviso to sub-rule (3) provides that the period of filing the appeal can be extended for a further period not exceeding 45 days. But the power to extend the period provided under the proviso is available only to the Hon'ble Appellate Tribunal.

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. 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, as the initial presentation as well as the subsequent presentation of the appeal after curing the defects is well beyond the period of 45 days, 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.43/2017 disposed of accordingly.

There is no representation for the Applicants today. However, a written request of the counsel for the Applicants to list the case on 18.12.2017 is seen in the file. Hence, ordered accordingly.

List the matter before the Hon'ble Appellate Tribunal on 18.12.2017.

(C.S. Sudha)
Registrar