

**THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**NEW DELHI**

**M.A. No.35/2018**

**In**

**Un-numbered Company Appeal (AT) No.     /2018**  
**(F.No.29/01/2018/NCLAT/UR/74)**

**In the matter of:**

Suman Dhir & Ors.

.... Applicants

Versus

Gyan Ganga Educational  
Institute Pvt. Ltd. & Ors.

.... Respondents

Appearance:       Mr. Somesh Dhawan, Advocate for the Applicants.

**13.02.2018**

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 No. 1 is an old and bed-ridden lady who is stationed at Raipur, Chhattisgarh. The counsel for the applicants is stationed at Gwalior, Madhya Pradesh. This caused the delay in presenting the appeal after curing the defects. Hence, the prayer is to condone one day's delay in presenting the appeal.

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 06.11.2017 in M.A. No. 172/2016, C.A. Nos. 70/2014, 82/2014 & 91/2014 in TCP No. 109/397-398/CLB/MB/MAH/2013 of the Hon'ble NCLT, Mumbai 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 is seen presented before the Registry on 29.01.2018. The appeal when scrutinised on 31.01.2018 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 submit the same within a period of seven days. The period of seven days expired on 07.02.2018. However, the appeal has been submitted after curing the defects only on 08.02.2018. According to the Section there is a delay of one day and so the matter has been put up before me under sub-rule (2) to rule 26 for appropriate orders.

6. The free certified copy of the impugned order dated 06.11.2017 is seen issued on 13.12.2017. Therefore, the Section rightly computed the period of limitation from 14.12.2017 and when so computed, the period of 45 days expired on 27.01.2018.

7. In the case on hand, the initial presentation of the appeal under Rule 22 is on 29.01.2018. Therefore, it was on the 46<sup>th</sup> day the appeal has been presented and hence there is a delay of one day in presenting the appeal. It is true that the proviso to sub-section (3) to section 421 of the Act provides that the period of filing the appeal can be extended for a further period not exceeding 45 days. However, the power to extend the period provided under the proviso can be invoked only by the Hon'ble Appellate Tribunal. 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 of the appeal under Rule 22 and subsequent presentation after curing the defects is 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.35/2018 disposed of accordingly.

List the matter before the Hon'ble Appellate Tribunal on 16.02.2018.

(C.S. Sudha)  
Registrar