

THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

M.A. No.40/2018

In

Un-numbered Company Appeal (AT) No. /2018
(F.No.25/01/2018/NCLAT/UR/67)

In the matter of:

United News of India & Ors.

.... Applicants

Versus

ROC,
NCT of Delhi & Haryana

.... Respondents

Appearance: Ms. Manisha Gupta, Company Secretary 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 appeal was presented before the Registry on 25.01.2018. The applicants came to know that the appeal was defective only on 31.01.2018 and so was under the impression that the period of 7 days granted for curing the defects would be computed only from 31.01.2018. It was thereafter informed by the Registry that the period of 7 days would be computed from 27.01.2018. Therefore, the prayer is to condone the delay 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 Applicants.

The aforesaid Appeal is against the order dated 12.12.2017 in C.P. No. 16/224/ND/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 is seen presented before the Registry on 25.01.2018. The appeal when scrutinised on 27.01.2018 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 03.02.2018. However, the appeal has been submitted after curing the defects only on 09.02.2018. According to the Section there is a delay of seven days 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 12.12.2017 is seen issued on 13.12.2017. Therefore, the period of limitation has to be computed from 14.12.2017 and not from 13.12.2017 as done by the Section. When so computed, the period of 45 days would expire on 27.01.2018.

7. In the case on hand, the initial presentation of the appeal under Rule 22 on 25.01.2018 is within the period of limitation. However, the subsequent presentation after curing the defects on 09.02.2018 is beyond the period of 45 days. 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.

8. In the instant case, as the 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.

9. **Point No.(ii):** - M.A. No.39/2018 disposed of accordingly.

List the matter before the Hon'ble Appellate Tribunal on 15.02.2018.

(C.S. Sudha)
Registrar