

THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

M.A. No.43/2018

In

Un-numbered Company Appeal (AT) No. /2018
(F.No.03/02/2018/NCLAT/UR/83)

In the matter of:

Sanjay Goel

.... Applicant

Versus

Majestic Buildcon Pvt. Ltd. & ors.

.... Respondents

Appearance: Ms. Arpita Yadav, Advocate for the Applicant.

19.02.2018

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 due to two intervening holidays, delay was caused in presenting the appeal after curing the defects. Hence, the prayer is to condone the delay of four days’.

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 30.11.2017 in C.P. No.70(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 03.02.2018. The appeal when scrutinised on 05.02.2018 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 12.02.2018. However, the appeal has been submitted after curing the defects only on 16.02.2018. According to the Section there is a delay of four days and so the matter has been put up before me under sub-rule (2) to rule 26 for appropriate orders.

6. The certified free copy of the impugned order dated 30.11.2017 is seen issued on 20.12.2017. Therefore, the office has rightly computed the period of limitation from 21.12.2017 and when so computed, the period of 45 days for filing the appeal would expire on 03.02.2018.

7. In the case on hand, the initial presentation of the appeal under Rule 22 on 03.02.2018 is within the period of 45 days provided under sub-section (3) to section 421 of the Act. However, the subsequent presentation after curing the defects on 16.02.2018 is apparently beyond the period of 45 days.

8. 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 presentation of the appeal 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.43/2018 disposed of accordingly.

List the matter before the Hon'ble Appellate Tribunal on 21.02.2018.

(C.S. Sudha)
Registrar