

THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

M.A. No.46/2017

In

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

In the matter of:

Atmaram B. Agarwal & Ors.

.... Applicants

Versus

Supriya Prints Pvt. Ltd. & Ors.

.... Respondents

Appearance: None for the Applicants.

03.01.2018

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 Applicants are residents of Vapi, Gujarat and the authorized representative a resident of Mumbai and hence the delay in curing the defects. The delay is not intentional and hence 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):** - None for the Applicants.

The aforesaid Appeal is against the order dated 16.08.2017 in T.P. No.42-A/2016, 42-B/2016, 42-C/2016 and 42-D/2016 with T.P. No.42/397/398/NCLT/AHM/2016(New) 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 is seen presented before the Registry on 14.11.2017. The appeal when scrutinised on 15.11.2017 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 22.11.2017. However, the appeal has been submitted after curing the defects only on 22.12.2017 and hence, the Section has put up the matter before me under sub-rule (2) to rule 26 for appropriate orders.

6. The certified copy of the impugned order issued free of cost is dated 06.09.2017. The allegation in Para VI of the appeal memorandum is that the certified copy was collected by the authorized representative of the Applicants on 04.10.2017, which is nearly one month after the copy was prepared for issue by the Registry of the NCLT Ahmedabad Bench. The Applicants have no case that though they had approached the Registry concerned for collecting the copy soon after it was made ready, it was not issued to them and that they had to wait till 04.10.2017 to get the copy. Therefore, the Section has correctly computed the limitation from 07.09.2017 and when so computed the period of 45 days would expire on 21.10.2017.

7. In the case on hand, the initial presentation of the appeal under Rule 22 is only on 14.11.2017, which is obviously much 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. However, the power to extend the period provided under the proviso can be invoked only by 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.46/2017 disposed of accordingly.

List the matter before the Hon'ble Appellate Tribunal on 04.01.2018.

(C.S. Sudha)
Registrar