

THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

M.A. No.04/2018

In

Un-numbered Company Appeal (AT) No. /2018
(F.No.19/12/2017/NCLAT/UR/706)

In the matter of:

Gangadhar Madupu Applicant

Versus

Katta Corp. Pvt. Ltd. & Ors. Respondents

Appearance: None for the Applicants.

05.01.2018

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 Applicant is a resident of USA, time was taken for retyping the documents and hence a delay of 10 days occurred, which delay is not intentional. Hence the prayer is to condone the delay of 10 days in filing 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 Applicant.

The aforesaid Appeal is against the order dated 05.10.2017 in C.P. No.6/241/HDB/2017 of the Hon'ble NCLT, Hyderabad 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 19.12.2017. The appeal when scrutinised on 20.12.2017 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 27.12.2017. However, the appeal has been submitted after curing the defects only on 03.01.2018 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 13.10.2017. The allegation in Para 2 of the appeal memorandum is that the certified copy was received by the Applicant on 13.10.2017. Therefore, the Section has rightly computed the period of limitation of 45 days from 14.10.2017 and when so computed the period of 45 days would expire on 27.11.2017.

7. In the case on hand, the initial presentation of the appeal under Rule 22 is only on 19.12.2017, 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.04/2018 disposed of accordingly.

List the matter before the Hon'ble Appellate Tribunal on 08.01.2018.

(C.S. Sudha)
Registrar