

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

**M.A. No.13/2018**

**In**

**Un-numbered Company Appeal (AT) No.     /2018**  
**(F.No.27/12/2017/NCLAT/UR/02)**

**In the matter of:**

Starlite Spintech Ltd. & Ors. .... Applicants

Versus

Dijaya Malind Properties (I) Pvt. Ltd. & Ors. .... Respondents

Appearance:       Shri Saurabh Malhotra, Advocate for the Applicants.

**17.01.2018**

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 person who is entrusted with the task of filing the appeal is a senior citizen based at Hyderabad. This caused the delay in curing the defects. Hence, the prayer is to extend the time for compliance granted for removal of 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 14.11.2017 in C.P. No.81/2011(T.P. No.60/HDB/2016) 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 27.12.2017. The appeal when scrutinised on 03.01.2018 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 10.01.2018. However, the appeal has been submitted after curing the defects only on 12.01.2018 and hence, the Section has put up the matter before me under sub-rule (2) to rule 26 for appropriate orders.

6. The copy of the impugned order dated 14.11.2017 produced is only a xerox copy. Therefore, the office has rightly computed the period of limitation starting from 15.11.2017 and when so computed, the period of 45 days for filing the appeal would expire on 29.12.2017.

7. In the case on hand, the initial presentation of the appeal under Rule 22 on 27.12.2017 is well 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 12.01.2018 is apparently beyond the period of 45 days. 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 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.13/2018 disposed of accordingly.

List the matter before the Hon'ble Appellate Tribunal on 19.01.2018.

(C.S. Sudha)  
Registrar