

THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

M.A. No.16/2018

In

Un-numbered Company Appeal (AT) No. /2018
(F.No.15/12/2017/NCLAT/UR/696)

In the matter of:

Eastern Tea Estates Ltd. Applicant

Versus

Gaurangika Patel & Ors. Respondents

Appearance: Shri Palzer Moktan, Advocate for the Applicant.

18.01.2018

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 delay was caused as the Applicant is in Kolkata and also because of the intervening holidays for the office of the Applicant and the Registry. The delay is stated to be neither intentional nor deliberate. Hence, the prayer is to condone the delay of 26 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):** - Heard the learned counsel for the Applicant.

The aforesaid Appeal is against the order dated 17.11.2017 in T.P. No.04/397/398/GB/2016 (C.P. No.994/2011) with I.A. No.20/2017 T.A. No.29/2016 (C.A. No.369/2011) and I.A. No.16/2017 of the Hon'ble NCLT, Guwahati 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 15.12.2017. The appeal when scrutinised on 16.12.2017 was found to be defective and hence on 18.12.2017, 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 25.12.2017. The said day being a holiday, the appeal ought to have been presented on 26.12.2017. However, the appeal has been submitted after curing the defects only on 16.01.2018 and hence, the Section has put up the matter before me under sub-rule (2) to rule 26 for appropriate orders.

6. The paid copy of the impugned order dated 17.11.2017 produced shows that it was issued on 30.11.2017. The Applicant has no case that a free copy of the impugned order was not issued to him. Therefore, the office has rightly computed the period of limitation starting from 18.11.2017 and when so computed, the period of 45 days for filing the appeal after excluding the time taken for obtaining the paid copy i.e. one day as evidenced from the details contained in the copy produced, would expire on 02.01.2018.

7. In the case on hand, the initial presentation of the appeal under Rule 22 on 15.12.2017 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 16.01.2018 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.16/2018 disposed of accordingly.

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

(C.S. Sudha)
Registrar