

THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

M.A. No.17/2018

In

Un-numbered Company Appeal (AT) No. ____/2018
(F.No.21/12/2017/NCLAT/UR/712)

In the matter of:

Achintya Kumar Barua & Ors. Applicants

Versus

Ranjit Bharthurkar & Anr. Respondents

Appearance: None for the Applicants.

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 due to the personal inconvenience of the Advocate Clerk, the defective appeal could not be taken back on 22.12.2017, the date on which intimation was received from the Registry. Thereafter, the Registry was closed till 02.01.2018 due to the New Year holidays. The appeal was taken back on 02.01.2018 and steps were taken immediately to cure the defects. The Applicants are from Kaziranga, Assam, which also contributed to the delay. The delay is neither wilful nor wanton and therefore, the prayer is to condone the delay of 18 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 Applicants.

The aforesaid Appeal is against the order dated 27.10.2017 in T.A. No.2/2016 (C.A. No.134/2016) in T.P. No.6/397/398/GB/2016 (C.P. No.287/2012) 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 21.12.2017. The appeal when scrutinised on 22.12.2017 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 29.12.2017. 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 certified free copy of the impugned order dated 27.10.2017 is seen issued on 08.11.2017. However, the order dated 27.10.2017 was corrected and a corrigendum was issued on 06.11.2017, a free copy of which was issued on 10.11.2017. Therefore, the period of limitation of 45 days has to be computed from 11.11.2017 and not from 09.11.2017 as done by the Section concerned. When so computed, the period of 45 days for filing the appeal would expire on 25.12.2017. The said day being a holiday, the 45 days' period would stand extended till 26.12.2017.

7. In the case on hand, the initial presentation of the appeal under Rule 22 on 21.12.2017 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.17/2018 disposed of accordingly.

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

(C.S. Sudha)
Registrar