

THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

M.A. No.18/2018

In

Un-numbered Company Appeal (AT) No. /2018
(F.No.20/12/2017/NCLAT/UR/707)

In the matter of:

Ratan Kumar Shaw Applicant

Versus

Vishal Gases Pvt. Ltd. & Ors. Respondents

Appearance: Shri Subhasish Bhowmiek, 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 West Bengal and also due to the intervening holidays for the Registry. The delay is stated to be not deliberate and hence the prayer is to condone the delay of 24 days 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):** - Heard the learned counsel for the Applicant.

The aforesaid Appeal is against the order dated 21.11.2017 in C.P. No.27(Kol)/2009 of the Hon'ble NCLT, Kolkata 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 20.12.2017. The appeal when scrutinised on 21.12.2017 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 28.12.2017. However, the appeal has been submitted after curing the defects only on 16.01.2018. According to the Section there is a delay of 19 days and so the matter has been put up before me under sub-rule (2) to rule 26 for appropriate orders.

6. The paid copy of the impugned order dated 21.11.2017 produced is seen issued on 05.12.2017. The Applicant has no case that a free certified copy of the order was not issued to him. Therefore, the office was right in computing the period of limitation from 22.11.2017 and when so computed, the period of 45 days after excluding the time taken for obtaining the certified copy i.e. from 29.11.2017 to 05.12.2017 would be 12.01.2018.

7. In the case on hand, the initial presentation of the appeal under Rule 22 on 20.12.2017 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 was argued on behalf of the Applicant that the Registrar exercising the powers under sub-rules (2) and (3) to rule 26 has the power to extend the time for compliance beyond seven days' as the initial presentation of the appeal is well within the period of 45 days for filing the appeal.

8. It is true that the proviso to sub-section (3) to section 421 of the Act 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. 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.18/2018 disposed of accordingly.

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

(C.S. Sudha)
Registrar