

THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

M.A. No.61/2018

In

Un-numbered Company Appeal (AT) No. ____/2018
(F.No.27/02/2018/NCLAT/UR/135)

In the matter of:

Maxzimaa Pharmaceuticals Pvt. Ltd.

.... Applicant/Appellant

Versus

Rachana Khatri & Anr.

.... Respondents

Appearance: Shri Abhay K. Das, Advocate for the Applicant.

16.03.2018

This is an application under Rules 11 & 15 of the NCLAT Rules, 2016 (hereinafter referred to as the Rules) read with Section 151 CPC seeking extension of time for compliance granted under sub-rule (2) to Rule 26.

2. The allegation in the application is that delay was caused as time was consumed for obtaining certified copy of the impugned order and also because of the intervening Holi holidays. Further, the counsel for the Applicant had a number of cases listed at various Courts, which also contributed to the delay in curing the defects. Hence, the prayer is to condone the delay of seven 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 25.01.2018 in C.P. No.149(ND)/2016 of the Hon'ble NCLT, New Delhi 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 27.02.2018. The appeal when scrutinised on 28.02.2018 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 07.03.2018. However, the appeal has been submitted after curing the defects only on 14.03.2018. According to the Section there is a delay of 07 days' and hence the matter has been put up before me under sub-rule (2) to rule 26 of the Rules for appropriate orders.

6. The certified copy of the impugned order dated 25.01.2018 produced is a paid copy and the same is seen issued on 08.03.2018. The allegation in appeal memorandum is that the impugned order came to the knowledge of the Applicant when the same was communicated by the counsel during the first week of February 2018. The impugned order shows that the counsel for the Applicant herein was also present and in fact he had also advanced arguments on the day on which the order was pronounced. Therefore, the allegation regarding the date of knowledge of the impugned order does not seem to be correct. That being the position, the Section has rightly computed the period of limitation from 26.01.2018 and when so computed the period of 45 days after excluding the time taken for obtaining the certified copy, i.e., from 07.03.2018 to 08.03.2018 would expire on 13.03.2018.

7. In the case on hand, the initial presentation of the appeal under Rule 22 on 27.02.2018 is within the period of limitation. However, the subsequent presentation after curing the defects on 14.03.2018 is on the 46th day. It is true that the proviso to sub-section (3) to section 421 of the Act provides that the period of filing an 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.61/2018 disposed of accordingly.

List the matter before the Hon'ble Appellate Tribunal on 19.03.2018.

(C.S. Sudha)
Registrar