

THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Un-numbered Company Appeal (AT) No. /2017

In the matter of:

Dr. Jang Bahadur Singh & Ors.

.... Appellants

Versus

Frick India Ltd. & Ors.

... Respondents

Appearance: Shri N. N. Sarvaria and Shri Nakul Pathania, Advocates for the Appellants.

01.11.2017

The aforesaid Appeal has been presented under Section 421 of the Companies Act, 2013 (hereinafter referred to as the Act) against the order dated 31.03.2017 in C.P. No.34(ND)/2012 of the Hon'ble NCLT, Principal Bench, New Delhi.

2. As per the defects sheet there is a delay of 155 days' in presenting the Appeal after curing the defects and hence, the matter has been put up before me under sub-rule (2) to rule 26 of the NCLAT Rules, 2016 (hereinafter referred to as the Rules).

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 Appellants.

Initially, the Appeal is seen presented before the Registry on 16.05.2017. The Appeal when scrutinised on the same day was found to be defective and hence, the Appellants were informed of the defects with a direction to re-submit the Appeal after curing the defects within a period of seven days. One of the defects then pointed out was that the certified copy of the impugned order had not been filed and

also that the Appeal has been filed beyond the period of limitation. The Appeal is seen to have been taken back on 03.07.2017 and thereafter presented after curing the defects on 25.10.2017, that is, after a delay of about 155 days’.

5. Sub-section (3) to section 421 of the Act says that 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. In the case on hand, the date of impugned order is 31.03.2017. Along with the Appeal memorandum the Appellants have produced a certified copy of the impugned order (Annexure A-1), which is seen to be a paid copy. The allegation in the Appeal memorandum is that the Appellants till date have not received a free copy of the impugned order from the Court below and hence, they applied for a certified copy on 29.06.2017 and were issued a copy on 13.07.2017. Therefore, it was argued that the date of limitation has to be computed from 13.07.2017.

6. Assuming that this argument advanced is right, even then it can be seen that there is a delay of about 58 days’ in presenting the Appeal as the period of 45 days stipulated under sub-section (3) to section 421 expired on 27.08.2017.

7. Sub-rule (2) to rule 26 says that if on scrutiny the Appeal is found to be defective, the Appeal shall after notice to the party be returned for compliance and if there is a failure to comply within seven days from the date of return, the same shall be placed before the Registrar, who may pass appropriate orders. As noticed earlier, the Appeal when scrutinised on 16.05.2017 was found to be defective and hence, the Appellants were intimated of the defects on the same day with a direction to cure the defects and re-submit the same within a period of seven days. The period of seven days expired on 23.05.2017. However, the Appeal after curing the defects is seen presented only on 25.10.2017.

8. According to the Appellants, they were not served with a free copy of the impugned order under sub-section (3) to section 420 of the Act and hence, they applied for the impugned order on 29.06.2017 and obtained the same on 13.07.2017. The application was obviously made after the initial presentation of the present

Appeal before this Registry and the certified copy of the order was obtained by the Appellants after the aforesaid period of seven days but well before 25.10.2017. However, the Appellants chose not to produce the certified copy of the impugned order and submit the Appeal after curing the defects within a reasonable time. On the other hand, they have presented the Appeal after curing the defects quite belatedly.

9. 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 period of 45 days (if the Appellants' argument is accepted) for filing an appeal stipulated under the Act expired on 27.08.2017. Proviso to sub-section (3) to section 421 empowers the Hon'ble Appellate Tribunal to entertain an appeal beyond the period of 45 days. However, this power can be exercised only by the Hon'ble Appellate Tribunal. 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.

10. An appeal is considered to have been filed only when it reaches the stage of Rule 27. In the instant case, the Appeal has been presented after curing the defects only after the period of 45 days. Hence, 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.

11. **Point No.(ii):-** List the matter before the Hon'ble Appellate Tribunal on 02.11.2017.

(C.S. Sudha)
Registrar