

**THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**NEW DELHI**

**M.A. No.26/2017**

**In**

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

**In the matter of:**

Nasik Diocesan Trust Assn. Pvt. Ltd. & Ors. .... Applicants

Versus

Uday Daniel Khare & Ors. .... Respondents

Appearance:        None for the Applicants.

**02.11.2017**

The aforesaid Appeal has been presented under Section 421 of the Companies Act, 2013 (hereinafter referred to as the Act) against the order dated 12.06.2017 in M.A. No.99/2017 in C.P. No.20/2016 of the Hon'ble NCLT, Mumbai Bench, Mumbai.

2. The scrutiny Section has noted 19 days' delay in presenting the Appeal after curing the defects and hence, has put up the matter 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):** - None appeared for the Applicants.

The Appeal is seen presented before the Registry on 03.10.2017. The Appeal when scrutinised on 05.10.2017 was found to be defective and hence, the Applicants were informed of the defects with a direction to re-submit the Appeal after curing

the defects within a period of seven days, that is, by 12.10.2017. The defective Appeal was taken back by the Applicants on 05.10.2017 and re-submitted after curing the defects on 31.10.2017, that is, with a delay of 19 days and hence, the present petition.

5. It is alleged in the petition that the Applicants are residents of Nasik and hence, the papers concerned had to be sent to Nasik which caused the delay in removing the defects. The delay is stated to be not wilful and hence, the prayer for condoning the delay in removing the defects.

6. 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 12.06.2017. The Applicants have not produced the certified copy of the impugned order. On the other hand, the copy produced is a xerox copy. In para-2 of the Appeal memorandum it is alleged that a certified copy of the impugned order was made available to them on 29.06.2017, however, the Applicants have no proof to offer for the same. In such circumstances, the limitation has been rightly computed by the scrutiny Section from 13.06.2017. If that be so, the period of 45 days for filing the Appeal expired on 27.07.2017. The present appeal has been presented under rule 22 on 03.10.2017, that is, with a delay of about 67 days.

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. The period of seven days granted expired on 12.10.2017. However, the Appeal after curing the defects is seen presented only on 31.10.2017.

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. 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.

9. 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 much 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.

10. **Point No.(ii):-** M.A. is disposed of accordingly.

List the matter before the Hon'ble Appellate Tribunal on 03.11.2017.

(C.S. Sudha)  
Registrar