

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

**M.A. No.27/2017**

**In**

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

**In the matter of:**

Brands Academy Pvt. Ltd. & Anr.

.... Applicants

Versus

Rishu Monga & Ors.

.... Respondents

Appearance:        Shri Bijender Singh with Ms. Vidushi, Advocates for the  
Applicants.

**03.11.2017**

The aforesaid Appeal has been presented under Section 421 of the Companies Act, 2013 (hereinafter referred to as the Act) against the order dated 13.09.2017 in C.P. No.05(MD)/2015 of the Hon'ble NCLT, New Delhi Bench.

2. In the application, it is alleged that the defective Appeal taken back on 25.09.2017 was misplaced and hence the delay of 29 days in curing the defects and re-submitting the same. The delay is stated to be neither wilful nor deliberate and hence, the prayer is to condone the delay 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 Applicants.

The instant Appeal is seen presented before the Registry on 22.09.2017 against the impugned order dated 13.09.2017. The Appeal when scrutinised on

25.09.2017 was found to be defective and hence, the Applicants were informed of the defects on the same day with a direction to submit the Appeal after curing the defects within a period of seven days, that is, by 02.10.2017. The said day being a public holiday, the Appeal ought to have been presented by 03.10.2017. However, the Appeal after curing the defects has been presented only on 01.11.2017.

5. Sub-section (3) to section 421 of the Act stipulates 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. Here, the date of the impugned order is 13.09.2017. The free certified copy of the order produced is dated 22.09.2017. Therefore, the Section has rightly computed the period of limitation from 23.09.2017. The period of 45 days for filing the Appeal will expire on 06.11.2017. Therefore, the initial presentation of the Appeal on 22.09.2017 and the subsequent presentation of the Appeal after curing the defects on 01.11.2017 is well within the period of 45 days.

6. 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. Sub-rule (3) to rule 26 enables the Registrar to extend the time for compliance given under sub-rule (2) to rule 26. Therefore, invoking the power under the aforesaid provision, the time granted for compliance under sub-rule (2) to rule 26 is extended as the subsequent presentation of the Appeal after curing the defects is also well within the period of 45 days stipulated under sub-section (3) to section 421 of the Act. Point answered accordingly.

7. **Point No.(ii):-** M.A. No.27/2017 is disposed of accordingly.

List the matter before the Hon'ble Appellate Tribunal on 07.11.2017.

(C.S. Sudha)  
Registrar