

THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

M.A. No.31/2017

In

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

In the matter of:

Photon NV, previously
North First Capital & Ors.

.... Applicants

Versus

Medici Holdings Ltd. & Ors.

.... Respondents

Appearance: Shri R. Anand Padmanabhan with Shri Akshay Ravi,
 Advocates for the Applicants.

30.11.2017

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 curing of the defects took some time and hence, the delay which is neither wilful nor wanton and, therefore, the prayer is to condone the delay of 14 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 Applicants.

The aforesaid Appeal is against the order dated 17.10.2017 in C.A. No. 90/2017 of the Hon'ble NCLT, Chennai 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 present appeal has been presented before the Registry on 06.11.2017. The appeal when scrutinised on 07.11.2017 was found to be defective and hence, on 08.11.2017 the Applicants were informed of the defects 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 15.11.2017. However, the appeal has been submitted after curing the defects only on 29.11.2017 and as there is a delay of 14 days (the noting by the Scrutiny Section that there is 16 days' delay is incorrect), the Section has put up the matter before me under sub-rule (2) to rule 26 for appropriate orders.

6. As noticed earlier, the impugned order is dated 17.10.2017. The copy of the impugned order produced is a xerox copy and not a certified copy. Therefore, the Section has computed the limitation from 18.10.2017. If that be so, the period of 45 days would expire only on 01.12.2017. The allegation in para-2 of the appeal memorandum is that the Applicants have so far not received the certified copy of the order and that they came to know of the order when it was uploaded on the website on 23.10.2017. If this allegation is accepted, then the period of limitation for filing the present appeal would expire only on 07.12.2017. In the case on hand, the initial presentation of the appeal under rule 22 is on 06.11.2017 and the subsequent presentation of the appeal after curing the defects is on 29.11.2017, which is obviously within the period of 45 days, prescribed for filing the appeal.

7. Sub-rule (3) to rule 26 enables the Registrar to extend the time for compliance given under sub-rule (2) to rule 26. The power 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. In the instant case, as the subsequent presentation of the appeal after curing the defects is well within the period of 45 days stipulated for filing the appeal, exercising the power under sub-rule (3) to rule 26 the time for compliance given under sub-rule (2) is extended. Point answered accordingly.

8. **Point No.(ii):-** M.A. No.31/2017 allowed.

List the matter before the Hon'ble Appellate Tribunal on 04.12.2017.

(C.S. Sudha)
Registrar