

THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

M.A. No.23/2017

In

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

In the matter of:

Surjeet Singh

.... Applicant

Versus

Prowess International Pvt. Ltd. & others

.... Respondents

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

06.09.2017

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

2. The allegation in the application is that the Applicant is from Jamshedpur and so, time was taken for curing the defects. It is also alleged that the Counsel for the Applicant was out of town and hence, was not able to re-present/ re-submit the Appeal within the time granted. Therefore, it is prayed that in the interest of justice the time taken for curing the defects in re-presenting/ re-submitting the Appeal may be extended.

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 has been presented on 18.08.2017 against the order dated 21.04.2017 in T.P. No.80/2016 in C.P. No.71/2014 of the Hon'ble NCLT, Kolkata Bench. The Applicant is seen to have received the impugned order on 20.06.2017. Sub-section (3) to section 421 of the Companies Act, 2013 (hereinafter referred to as the Act) says that an Appeal has to be filed within a period of 45 days from the date on which the copy of the impugned order is made available to the person aggrieved. In the instant case, the period of 45 days expired on 05.08.2017.

5. The aforesaid Appeal is seen presented before the Registry only on 18.08.2017, i.e., with a delay of 13 days. The Appeal on scrutiny was found to be defective and hence the Applicants were informed of the defects on 21.08.2017 and they were directed to cure the defects within a period of seven days. The defective Appeal was taken back on 29.08.2017. The period of seven days granted for curing the defects expired on 28.08.2017. However, the Appeal after curing the defects was re-submitted/ re-presented only on 29.08.2017, i.e., with a delay of one day. Hence, the scrutiny Section has placed the matter before me under sub-rule (2) to rule 26 for appropriate orders.

6. Sub-rule (3) to rule 26 enables the Registrar to extend the time given for compliance under sub-rule (2) to rule 26. However, the Rules cannot override the provisions of the Act. As stated earlier, 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 the impugned order has been made available to the person aggrieved. Here, the period of 45 days expired on 05.08.2017. 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.

7. In the instant case, the initial presentation of the Appeal was beyond 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 is placed before the Hon'ble Appellate Tribunal for appropriate orders. Point answered accordingly.

8. **Point No.(ii):-** M.A. No.23/2017 disposed of accordingly.

List the matter before the Hon'ble Appellate Tribunal on 08.09.2017.

(C.S. Sudha)
Registrar