

THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

M.A. No.24/2017

In

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

In the matter of:

K Sivaprakasam & Ors.

.... Applicants

Versus

SKN Boarding & Lodging Pvt. Ltd. & Ors.

.... Respondents

Appearance: Shri Aditya Verma, Advocate for the Applicants.

13.09.2017

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 Applicant No.1 is a resident of Chennai and hence the delay in re-submitting/ re-presenting the Appeal after curing the defects. The delay is not deliberate and 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 Applicants.

The aforesaid Appeal has been presented on 21.08.2017 against the order dated 06.07.2017 in T.C.P. No.126/2016 (C.P. No. 71/2013) of the Hon'ble NCLT, Chennai Bench. It is alleged in the Appeal memorandum that the certified copy of the impugned order was made available on 11.07.2017. 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 25.08.2017.

5. The Appeal presented before the Registry on 21.8.2017 is well within the period of 45 days. The Appeal when scrutinised on 22.08.2017 was found to be defective and hence the Applicants were informed of the defects on 23.08.2017 and they were directed to cure the defects within a period of seven days. The defective Appeal was taken back on 23.08.2017. The period of seven days granted for curing the defects expired on 30.08.2017. However, the Appeal after curing the defects was re-submitted/ re-presented only on 08.09.2017, i.e., with a delay of nine days. 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 for compliance given 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 25.08.2017. 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 under rule 22 was within the period of 45 days. An Appeal is considered to have been filed only when it reaches the stage of Rule 27. The Appeal was re-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.

8. **Point No.(ii):-** M.A. No.24/2017 disposed of accordingly.

List the matter before the Hon'ble Appellate Tribunal on 14.09.2017.

(C.S. Sudha)
Registrar