

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

**M.A. No.25/2017**

**In**

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

**In the matter of:**

Priyaranjani Fibres Ltd. & others

.... Applicants

Versus

D. Drinivasa Rao & others

.... Respondents

Appearance:       Shri Tushar Bhatnagar, Advocate for the Applicants.

**14.09.2017**

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 the defects sheet was received only on 04.09.2017 and as the Applicants are in Chennai, time was taken for curing the defects. It is also alleged that though the Applicants had approached the Registry to re-present the Appeal on 11.09.2017, there was nobody on duty at the counter and hence, the Applicants could re-present/ re-submit the Appeal only on 12.09.2017. The delay caused is not deliberate and therefore, the prayer is to extend the time given for curing the defects in the interest of justice.

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 presented on 30.08.2017 is against the order dated 15.05.2017 in C.P. No. 87/2007 (T.P. No.15/HDB/2016) of the Hon'ble NCLT, Hyderabad Bench. 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.

5. The defects sheet says that the date of impugned order is 15.05.2017 and hence, the Section has taken 16.05.2017 as the date from which the period of 45 days has to be computed. This does not appear to be correct.

6. The allegation in the Appeal memorandum and in the application for condonation of delay in filing Appeal is that though the impugned order was pronounced on 15.05.2017, it was made available to the Registry and uploaded on the website only on 23.06.2017. The counsel for the Applicants is stated to have downloaded the order on 05.07.2017. Thereafter, an application for obtaining a certified copy of the order was made on 05.07.2017 and the order was obtained on the same day.

7. The certified copy of the impugned order produced seems to be the free copy issued to the Applicants. But it does not contain the date on which it was issued. However, going by the allegation that it was issued on 05.07.2017, the limitation period of 45 days has to be computed from 06.07.2017. Then the Appeal ought to have been filed on or before 19.08.2017. However, the Appeal was presented under Rule 22 only on 30.08.2017, i.e. with a delay of 10 days.

8. The Appeal when scrutinised on 01.09.2017 was found to be defective and hence, the Applicants were informed of the defects on the same day and they were directed to rectify the defects and re-submit the Appeal within a period of 7 days. The Appeal was taken back on 04.09.2017 and re-submitted/ re-presented on 12.09.2017. According to the scrutiny Section, there is a delay of 5 days in re-

presenting the Appeal after curing the defects and hence, the matter has been put up before me under sub-rule (2) to rule 26.

9. The stand taken by the scrutiny Section relating to delay of 5 days is disputed by the Applicants, who allege that they were informed of the defects by about 04:45 PM on 01.09.2017 and, therefore, it was not possible to take back the defective Appeal on the same day. 02.09.2017 and 03.09.2017 were public holidays. On 11.09.2017, the Appeal was attempted to be re-presented but there was nobody at the filing counter and hence, the Applicants could re-present/ re-submit the Appeal only on 12.09.2017.

10. 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. But 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.

11. In this circumstance, the matter be placed before the Hon'ble Appellate Tribunal for appropriate orders. Point answered accordingly.

12. **Point No.(ii):-** M.A. No.25/2017 disposed of accordingly.

List the matter before the Hon'ble Appellate Tribunal on 18.09.2017.

(C.S. Sudha)  
Registrar