

THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

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

In the matter of:

Sunil Setin

.... Appellant

Versus

Symphony Ltd. & others

.... Respondents

Appearance: None for the Appellant.

18.09.2017

The aforesaid Appeal has been presented under Section 421 of the Companies Act, 2013 (hereinafter referred to as the Act) against the order dated 09.06.2017 in Co.A. No.2/2017 of the Hon'ble NCLT, Ahmedabad Bench.

2. 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 a copy of the impugned order is made available to the person aggrieved. It is alleged that the certified copy of the impugned order was received by post on 06.07.2017. The scrutiny Section has therefore correctly computed the period of limitation from 07.07.2017.

3. The period of 45 days expired on 20.08.2017. The Appeal has been presented under Rule 22 of the NCLAT Rules, 2016 (hereinafter referred to as the Rules) within the time limit of 45 days i.e. on 17.08.2017.

4. The Appeal when scrutinized on 18.08.2017 was found to be defective. The scrutiny Section reports that on 18.08.2017 attempt was made to contact the person whose mobile number has been given in the Appeal paper book to intimate the defects. However, nobody responded. Thereafter, on 29.08.2017 attempt was again

made to intimate the defects. It is seen recorded in the defects sheet by the dealing hand that the call though initially attended was disconnected by the person receiving the call and hence on 31.08.2017 a mail was sent to the counsel for the Appellant.

5. The Appeal was returned on 11.09.2017 and it was re-submitted after curing the defects on the same day. The Scrutiny Section reports that there is 17 days' delay in re-submitting the Appeal and hence has put up the matter before me under sub-rule (2) to rule 26.

6. None appeared for the Appellant.

7. In the instant case, the initial presentation of the Appeal is within the period of limitation. However, the Appeal has been re-submitted after curing the defects much beyond the period of 45 days. 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. Therefore, place the matter before the Hon'ble Appellate Tribunal for appropriate orders.

List the matter before the Hon'ble Appellate Tribunal on 19.09.2017.

(C.S. Sudha)
Registrar