

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No. 256 of 2017

IN THE MATTER OF:

R. Prasanth

.....Appellant

Vs.

UBC Engineers Pvt. Ltd. & Ors.

.....Respondents

Present: For Appellant:- Mr. Shaijan C. George and Mr. James P. Thomas, Advocates.

For Respondents:- Ms. Prachi Wazalwar with Mr. Anandh Iyer, Advocates.

ORDER

30.08.2017- Ms. Prachi Wazalwar, Advocate has filed Vakalatnama on behalf of 2nd Respondent but prays for time to file Vakalatnama on behalf of the rest of the respondents in course of day. She is allowed to do so.

2. This appeal has been preferred by the appellant against order dated 6th February, 2017 passed by National Company Law Tribunal (hereinafter referred to as "Tribunal"), Mumbai Bench in T.C.P.No.36/397 in C.P.No.1/245/NCLT/MB/MAH/2016 along with a petition for condonation of delay. The main ground taken by the appellant is that the appellant was not served with the copy of the impugned order but having come to know in March, 2017, approached the Tribunal number of time and finally on an application preferred by appellant on 4th April, 2017 the certified copy was supplied on 26th April, 2017.

3. Ld. Counsel appearing on behalf of Respondent submitted that the delay is more than 45 days beyond the period of 45 days and therefore Appellate Tribunal has no jurisdiction to condone the delay.

4. We have heard Ld. Counsel for the parties and perused the record.

5. Appeal against order of Tribunal can be preferred by the Appellate Tribunal under Section 421 of the Companies Act, 2013 as per sub-section (3) of Section 421 the appeal is required to be filed within 45 days. Under proviso to sub-section (3) of Section 421 the Appellate Tribunal is empowered to entertain an appeal after the expiry of the said period of 45 days, but not exceeding 45 days as evident from the provision and quoted below:

“421. Appeal from orders of Tribunal. — (1) *Any person aggrieved by an order of the Tribunal may prefer an appeal to the Appellate Tribunal.*

(2) *No appeal shall lie to the Appellate Tribunal from an order made by the Tribunal with the consent of parties.*

(3) *Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order of the Tribunal is made available to the person aggrieved and shall be in such form, and accompanied by such fees, as may be prescribed:*

Provided *that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days from the date aforesaid, but within a further period not exceeding forty-five days, if it is*

satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period.

(4) On the receipt of an appeal under sub-section (1), the Appellate Tribunal shall, after giving the parties to the appeal a reasonable opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(5) The Appellate Tribunal shall send a copy of every order made by it to the Tribunal and the parties to appeal.”

6. In the present case, after receipt of copy of the impugned order on 26th April, 2017, the appellant presented a defective appeal on 2nd June, 2017 which was pointed out and the paper books were returned. After the removal of the defect, the appeal was filed on 1st August, 2017.

7. Rule 26 of the National Company Law Appellate Tribunal Rules, 2016 relate to scrutiny of Petition and appeal. As per said Rule, if the appeal is defective, the Registry after pointing out the defects return the paper books for removal of defect. Only after the removal of the defects the appeal is accepted as prescribed under Rule 27 and reads as follows:

“26. Endorsement and scrutiny of petition or appeal or document.- (1) *The person in charge of the filing-counter shall immediately on receipt of appeal or document affix the date and stamp of the Appellate Tribunal thereon and also on the additional copies of the index and return the*

acknowledgement to the party and he shall also affix his initials on the stamp affixed on the first page of the copies and enter the particulars of all such documents in the register after daily filing and assign a diary number which shall be entered below the date stamp and thereafter cause it to be sent for scrutiny.

(2) If, on scrutiny, the appeal or document is found to be defective, such document shall, after notice to the party, be returned for compliance and if there is a failure to comply within seven days from the date of return, the same shall be placed before the Registrar who may pass appropriate orders.

(3) The Registrar may for sufficient cause return the said document for rectification or amendment to the party filing the same, and for this purpose may allow to the party concerned such reasonable time as he may consider necessary or extend the time for compliance.

(4) Where the party fails to take any step for the removal of the defect within the time fixed for the same, the Registrar may, for reasons to be recorded in writing, decline to register the appeal or pleading or document.”

“27. Registration of proceedings admitted. - *On admission of appeal, the same shall be numbered and registered in the appropriate register maintained in this behalf and its number shall be entered therein.”*

8. In view of Rules aforesaid, as the appeal has been treated to have been filed on 1st August, 2017 i.e. after removal of the defects. Forty-five days of filing appeal expired on 10th June, 2017 thereafter, another forty-five days expired on 24th July, 2017. As the appeal has been preferred on 1st August, 2017 and the delay is being more than forty-five days, this Appellate Tribunal has no jurisdiction to condone the delay.

9. This apart we are also not satisfied with the ground shown for condonation of delay, as the appellant has not given reasons as to why it has taken two months to remove the defects.

10. For the reasons aforesaid, the application for condonation of delay is rejected. The appeal is dismissed being barred by limitation.

(Justice S.J. Mukhopadhaya)
Chairperson

(Balvinder Singh)
Member(Technical)

ar