

THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

M.A. No.104/2018

In

Un-numbered Company Appeal (AT) No. ___/2018

(F.No.23/04/2018/NCLAT/UR/300)

In the matter of:

TMT Sulochana Applicant/ Appellant

Versus

Arunodhaya Enterprises Ltd. & Ors. Respondents

Appearance: Shri Sougat Sinha, Advocate for the Applicant.

11.05.2018

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 delay was caused as the defective papers had to be sent for rectification to the Applicant in Chennai. The delay is alleged to be neither intentional nor mala-fide. Hence the prayer is to extend the time for compliance by six days.

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 is against the order dated 29.12.2017 in TCP No.24 of 2016 (CP No.11 of 2018) of the Hon'ble NCLT, Chennai Bench. As per sub-section (3) to section 421 of the Companies Act, 2013 (hereinafter referred to as the Act) 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.

5. The appeal herein is seen presented before the Registry on 23.04.2018. The appeal when scrutinised on 26.04.2018 was found to be defective and hence on the same day, the Applicant was informed of the defects with a direction to cure them and submit the same within a period of seven days. The period of seven days expired on 02.05.2018. However, the appeal has been submitted after curing the defects only on 08.05.2018. According to the Section there is a delay of five days' and hence the matter has been put up before me under sub-rule (2) to rule 26 of the Rules for appropriate orders.

6. The certified free copy of the impugned order dated 29.12.2017 is seen issued on 17.01.2018. Therefore, the office computed the period of limitation from 18.01.2018 and when so computed, the period of 45 days for filing the appeal would expire on 03.03.2018. However, the allegation in para-2 of the Appeal memorandum is that the copy was received on 22.01.20218 and in support of the same the envelope in which the order was received has been produced and is placed at page 73 of the Appeal paper book. In such circumstances, the period of limitation will have to be computed from 23.01.2018 and when so computed, the period of 45 days would expire on 08.03.2018.

7. In the case on hand, the initial presentation on 23.04.2018 and the subsequent presentation on 08.05.2018 are obviously beyond the period of 45 days provided under sub-section (3) to section 421 of the Act to file the appeal. It is true that the proviso to sub-section (3) to section 421 of the Act provides that the period of filing an appeal can be extended for a further period not exceeding 45 days. However, the power to extend the period provided under the proviso can be invoked only by the Hon'ble Appellate Tribunal.

8. 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. 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.

9. In the instant case, as the initial presentation as well as the subsequent presentation of the appeal after curing the defects is well beyond the period of 45 days, 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.

10. **Point No.(ii):** - M.A. No.104/2018 disposed of accordingly.

List the matter before the Hon'ble Appellate Tribunal on 15.05.2018.

(C.S. Sudha)
Registrar