

THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

M.A. No.106/2018

In

Un-numbered Company Appeal (AT) No. ___/2018
(F.No.18/04/2018/NCLAT/UR/280)

In the matter of:

Dr. Subba Rao Pavuluri Applicant/Appellant

Versus

Gagan Aerospace Ltd. & Ors. Respondent

Appearance: Shri Y. Suryanarayana, Advocate for the Applicant.

14.05.2018

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 in curing the defects was caused due to the personal inconvenience of the Counsel who is stationed at Hyderabad. The delay is not intentional, but bonafide. Hence, the prayer is to extend the time for compliance by 10 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 08.03.2018 in CA/51, 52 & 53/2018 in CA/73/97/HDB/2016 of the Hon'ble NCLT, Hyderabad 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 18.04.2018. The appeal when scrutinised on 21.04.2018 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 28.04.2018. However, the appeal has been submitted after curing the defects only on 10.05.2018. According to the Section there is a delay of ten 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 copy of the impugned order dated 08.03.2018 produced is a paid copy, which is seen issued on 11.04.2018. Therefore, the Section has rightly computed the period of limitation from 09.03.2018 and when so computed the period of 45 days (after excluding the time taken for obtaining the certified copy, i.e., 03.04.2018 to 11.04.2018) would expire on 01.05.2018.

7. In the case on hand, the initial presentation of the appeal under Rule 22 on 18.04.2018 is within the period of limitation. However, the subsequent presentation after curing the defects on 10.05.2018 is apparently beyond the period of 45 days. 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 presentation of the appeal after curing the defects is 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.106/2018 disposed of accordingly.

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

(C.S. Sudha)
Registrar