

THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

M.A. No.111/2018

In

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

(F.No.10/05/2018/NCLAT/UR/373)

In the matter of:

Ajit Singh S/o Rambachan

.... Applicant/Appellant

Versus

Telex Links India Pvt. Ltd. & 2 others

.... Respondents

Appearance: Shri Pankaj Sharma, Advocate for the Appellant.

30.05.2018

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 grounds taken for condonation of delay in re-filing the Memo of Appeal is that on 10.05.2018 the Appellant preferred an Appeal, thereafter, the defects were pointed out by the Office and then the defects were intimated to his Counsel, who is residing in Nagpur, thereafter the same was corrected and forwarded through e-mail. Further, after obtaining the hard copy of the defects, the Appellant forwarded the same to his Counsel at Nagpur, prepared a set of files for re-filing, but since the hard copy of the Appeal could not be signed by his Counsel Mr. Ghanshyam J. Srivastava, who was residing at Nagpur, therefore, the Registry refused to accept the same, when it was presented within the period of limitation prescribed under the law. Further, thereafter the Appellant engaged another Lawyer and handed over the file to him and he accordingly, prepared the additional sets of the file and then the Appellant re-

filed the same and on this ground the Appellant prayed to condone the delay in re-filing the Memo of Appeal.

3. The points to be considered before me are that: -

i) Under Rule 26(2) sub-rule (3) the delay pointed out by the Office is liable to be condoned?

ii) Any other relief?

4. Heard the learned counsel for the Appellant. Perused the averments made in the application filed for condonation of delay in re-filing the Memo of Appeal.

5. Learned Counsel addressed on the facts mentioned in the petition for condonation of delay. He further submitted that the delay was not intentional rather he was prevented by sufficient cause and failed to file the Memo of Appeal within the time prescribed under the law, i.e. within seven days after receiving the same, as pointed out by the Office.

6. Considering the submissions made by the learned Counsel and on perusal of the averments made in the application for condonation of delay as well as Office note, I find, as per the Office note, there is delay of four days' in re-presentation of Memo of Appeal. It further appears that the Office has also mentioned the period of limitation and according to the Office note, the period of limitation for filing the Appeal was going to be expired on 11.05.2018, whereas this Memo of Appeal was filed/ preferred on 10.05.2018 and that is why, the Office has not pointed out the delay, if any, in presenting the Memo of Appeal for the first time from the date of order when it was made available to the Appellant. So, in my opinion, as per Office note, the Appeal was presented within time as required under Section 421 of the Companies Act, 2013 (hereinafter referred to as the 'Act'), which says that the *“Appeal shall be filed within a period of 45 days from the date on which a copy of the order of the Tribunal is made available to the person aggrieved”*. So on the basis of above facts, I am of the considered view that when the Appeal was presented for the first time, i.e., on 10.05.2018, the Appeal was presented within time prescribed under Section 421 of the Act.

7. Now the question is when the Memo of Appeal was returned to the party for removing the defects as pointed out by the Office as required under rule 26(2) of the Rules, then the party/ Appellant was required to re-present the same within seven days from the date of return, but as per Office note, Memo of Appeal was returned to the Appellant on 15.05.2018, whereas it was re-presented on 24.05.2018. So admittedly, it was not re-presented within the time prescribed under rule 26(2) of the Rules.

8. As I have already mentioned, the grounds taken by the Appellant for condoning the delay in aforementioned para, and so, in my opinion, the ground taken by the Appellant is cogent and it is liable to be accepted. Accordingly, by exercising my power under Rule 26(2) of the Rules, I hereby condone the delay in re-filing the Appeal.

9. The Point No.1 is answered accordingly. So far as the Point No.2 is concerned, the Appellant is not entitled for any other relief.

10. With the aforesaid order, the application for condoning the delay stands disposed of.

List the case for admission before the Hon'ble Appellate Tribunal on 31.05.2018.

(Abni Ranjan Kumar Sinha)
Registrar