

THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Un-numbered Company Appeal (AT) (Insolvency) No. ___/2018
(F.No.10/09/2018/NCLAT/UR/845)

In the matter of:

Raphael Engineering Pvt. Ltd. Appellant

Versus

Mr. Rajendra K. Bhuta & Ors. Respondents

Appearance: Shri A.C. Philip, Advocate for the Appellant

14.09.2018

Heard the learned Lawyer appearing for the Appellant.

2. Learned Lawyer submitted that the title page affixed in the file shows the Respondents name in place of the Appellant, whereas the Appellant name is shown as Respondent. Office is directed to correct the cause title accordingly.

3. So far the defects pointed out by the Office is concerned, learned Lawyer appearing for the Appellant submitted that in view of Section 421 (1) of the Companies Act, 2013 (hereinafter referred to as the 'Act'), he can challenge various orders passed by the learned NCLT in a same proceeding by filing one Appeal and for that there is no need to deposit the separate court fee for every impugned order, which is under challenge in this Appeal, arising from the same proceedings, hence, the defects pointed out by the Office as defect Nos.11, 12 and 13 are liable to be ignored. He further submitted that in view of Order II Rule 2 of the CPC, the plaintiff may relinquish any portion of his claim, so the defects pointed out by the Office may be ignored. He further submitted that the National Company Law Appellate Tribunal Rules, 2016 (hereinafter referred to as the 'Rules') says that the Appellant is required to pay Rs.5,000/- for one Appeal and so, there is no need to deposit the further court fee as pointed out by the Office.

4. In the light of the submissions made on behalf of the learned Lawyer appearing for the Appellant, at first, I would like to quote the two provisions upon which the learned Counsel placed reliance, i.e., Section 421 (1) of the Act as well as Order II Rule 2 CPC and the same are quoted below: -

“Section 421 of the Companies Act, 2013

421. (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.

“Order II Rule 2 of the Code of Civil Procedure

2. Suit to include the whole claim

(1) ”

(2) Relinquishment of part of claim- Where a plaintiff omits to sue in respect of, or internationally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) ”

5. The plain reading of the Section 421 (3) of the Act says that every appeal under sub-section (1) of Section 421 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. However, the proviso attached to sub-section (3) of Section 421 empowers the Hon’ble Tribunal to entertain an appeal even after the expiry of period of forty-five days. But there is no specific provision under Section 421, which empowers the Registrar to exempt the Appellant to deposit the court fee in view of sub-section (3) of Section 421 for such order, which the Appellant intends to challenge. At his stage, I would also like to mention this fact that Section 421(3) of the Act specifically mentions the word ‘**order**’ and not the word ‘orders’. Therefore, in my opinion, if I read the provision of Section 421(3) of the Act in its letter and spirit, then it can be said that Section 421(3) is very specific that if a person intends to challenge the order of the Tribunal, he shall file appeal accompanied by such fees, as prescribed. At this juncture, I would also like to refer to the Schedule of Fees given in the Rules, which shows that if an Appeal under Section 421(1) of the Act is filed, then the Appellant is required to deposit Court fee of Rs.5,000/-.

6. As I have already referred to Section 421(3) of the Act and according to that Section I am of the considered view that if a person intends to challenge one order, then he has to deposit court fee of Rs.5,000/- as prescribed in the Schedule of Fees, but if he intends to challenge more than one order, then he has to deposit court fee for each impugned order, which he intends to challenge.

7. So, under such circumstances, I am unable to accept the contention raised on behalf of the learned Lawyer appearing for the Appellant that since all the orders against which the Appellant preferred the present Appeal are from the same proceedings, therefore, he is liable to pay court fee of Rs.5,000/- only as shown in the Schedule of Fees.

8. So far Order II Rule 2 CPC is concerned, in my opinion, it relates to the filing of suit, in which a person has liberty to relinquish any portion of the claim, which he is entitled to claim. Therefore, in my opinion, this provision will not help the Appellant to claim exemption of court fees, which he is required to pay, if he intends to challenge more than one order.

9. For the reasons discussed above, I am unable to ignore the defects pointed out by the Office. Therefore, the Appellant is directed to deposit the court fee as pointed out by the Office, thereafter place the matter before me.

10. In the course of writing of order, learned Lawyer appearing for the Appellant submitted that he wanted to deposit court fee and, so, for that one week's time may be granted.

11. As prayed, put-up on 20.09.2018 before the Registrar Court.

(Abni Ranjan Kumar Sinha)
Registrar

Dictated and corrected by me.

(Abni Ranjan Kumar Sinha)
Registrar