

THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

M.A. No.73/2018

In

Un-numbered Company Appeal (AT) (Insolvency) No. ___/2018
(F.No.16/03/2018/NCLAT/UR/181)

In the matter of:

CG Power & Industrial Solutions Ltd. Applicant/ Appellant

Versus

ACC Ltd. Respondent

Appearance: Shri Sumit Srivastava, Advocate for the Applicant.

06.04.2018

This is an application stated to be filed under Rule 31 read with Rule 11, 14 & 15 of the NCLAT Rules, 2016 (hereinafter referred to as the Rules) to extend the time granted for compliance.

2. The allegation in the application is that the delay in rectifying the defects was caused as the Applicant could obtain the original Power of Attorney and the Board Resolution only a few days back. Therefore, the prayer is to condone the delay of nine days' in presenting the Appeal after curing the defects.

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 under Section 61 of the I&B Code, 2016 (hereinafter referred to as the Code) is against the order dated 16.02.2018 in CP No.1681/IB&C/2017 of the Hon'ble NCLT, Mumbai Bench.

5. The aforesaid appeal is seen presented before the Registry on 16.03.2018. The appeal when scrutinised on the same day was found to be defective and hence on 19.03.2018 the Applicants were informed of the defects with a direction to cure them

within a period of seven days. The period of seven days' expired on 26.03.2018. However, the appeal was presented after curing the defects only on 04.04.2018. According to the Section there is a delay of nine 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. Sub-section (2) to section 61 of the Code says that every appeal under sub-section (1) shall be filed within 30 days before the Appellate Tribunal. The free certified copy of the impugned order dated 16.02.2018 is seen issued on 21.02.2018. Hence, the Section has rightly computed the period of limitation from 22.02.2018 and when so computed the period of 30 days would expire on 23.03.2018.

7. The initial presentation of the appeal on 16.03.2018 is within the period of limitation. However, the subsequent presentation after curing the defects on 04.04.2018 is apparently after the expiry of 30 days for filing the appeal. The proviso to sub-section (2) to section 61 of the Code states that the period of 30 days for filing an appeal can be extended by a period of 15 days. However, this power can be exercised only by the Hon'ble Appellate Tribunal. The time granted under sub-rule (2) to rule 26 for compliance can be extended by the Registrar under sub-rule (3) to rule 26, provided it is within the period of 30 days stipulated under the Code for filing an appeal, as the Rules cannot override the provisions of the Act. In the instant case, as the time taken is beyond the period of 30 days, the matter be placed before the Hon'ble Appellate Tribunal for appropriate orders. Point answered accordingly.

8. **Point No.(ii):** - M.A. No.73/2018 disposed of accordingly.

List the matter before the Hon'ble Appellate Tribunal on 09.04.2018.

(C.S. Sudha)
Registrar