

THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

M.A. No.76/2018

In

Un-numbered Company Appeal (AT) (Insolvency) No. ____/2018
(F.No.26/03/2018/NCLAT/UR/198)

In the matter of:

Prateek Gupta

.... Applicant/ Appellant

Versus

M/s. Columbia Petro Chem Pvt. Ltd. & Anr.

.... Respondents

Appearance: Ms. Srishthi Juneja, Advocate for the Applicant.

13.04.2018

This is an application stated to be filed under Rule 26 read with Rule 11 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 was caused as the Applicant in Mumbai had to come down to Delhi to rectify the defects. The prayer is to condone the delay of one day 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 25.01.2018 in C.P. No. IB-343/(ND)/2017 of the Hon'ble NCLT, New Delhi Bench.

5. The aforesaid appeal is seen presented before the Registry on 26.03.2018. The appeal when scrutinised on 28.03.2018 was found to be defective and hence on the

same day the Applicant was informed of the defects with a direction to cure them within a period of seven days. The period of seven days' expired on 04.04.2018. However, the appeal was presented after curing the defects only on 11.04.2018. As there is delay in refiling the Appeal, 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. As per sub-rule (2) to Rule 22 every appeal has to be accompanied by a certified copy of the impugned order. Here, the copy produced is only a xerox copy. In para-2 of the Appeal memorandum it is alleged thus – “.....Thereafter only on 8th February, 2017 [sic] the Appellant got a copy of the impugned order dated 25.01.2018.” Reference to the year as 2017 appears to be a mistake and the allegation seems to be that the impugned order was communicated on 08.02.2018. However, no proof to substantiate the said allegation is seen on record. Even assuming that this allegation is correct and limitation is computed from 09.02.2018, the period of 30 days would expire on 10.03.2018. 10.03.2018 being a 2nd Saturday, the Appeal ought to have been presented on 12.03.2018. As the copy produced is only a xerox copy, the Section computed the period of limitation from 26.01.2018 and when so computed the period of 30 days would expire on 24.02.2018.

7. The initial presentation of the appeal on 26.03.2018 and the subsequent presentation after curing the defects on 11.04.2018 are apparently much 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.76/2018 disposed of accordingly.

List the matter before the Hon'ble Appellate Tribunal on 16.04.2018.

(C.S. Sudha)
Registrar