

THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

M.A. No.144/2018
Un-numbered Company Appeal (AT) (Insolvency) No. ____/2018
(F.No.24/08/2018/NCLAT/UR/654)

In the matter of:

Mr. Thothappa Nainar
Mohamed Sirajdheen

.... Appellant

Versus

INTEX Technologies (India) Ltd.

.... Respondent

Appearance: Shri K.V. Balakrishnan, Advocate for the Appellant

16.08.2018

This is an application under sub-rule (2) to Rule 26 of the NCLAT Rules, 2016 (hereinafter referred to as the Rules) to extend the time granted for compliance.

2. The facts mentioned in the Miscellaneous Application in short is that the Appellant filed this Appeal on 24.07.2018 and after scrutiny, the defects were intimated to the Appellant on 26.07.2018 and on the same day, the Appellant received the Memo of Appeal for removing the defects. Further, one of the defect pointed out by the Registry is that Memorandum of Appeal was not signed by the Appellant and the Memorandum is not in accordance with Form NCLAT-1. Since, the Appellant was the resident of Tamil Nadu and during that period, the Appellant was unwell, therefore, the defects could not be cured within time and there is seven days' delay in re-filing the Memo of appeal, so, the same may be condoned.

3. Apart from the aforesaid defect, the Office has also pointed out one defect, which is defect No.8 and according to the report of the

Office, the original Board Resolution has not been filed, rather, a photocopy of the Board Resolution is filed.

4. Heard learned Lawyer appearing for the Appellant, perused the Office note and the averments made in the Miscellaneous Application.

5. Learned Lawyer appearing for the Appellant submitted that so far the defect No.8 pointed out by the Office is concerned, he has already mentioned this fact in a separate letter addressed to the Registrar that the Appeal is being filed in the capacity of the shareholder and not as the Board of Director or the authorised person of the Member of the Board of Director and he has also mentioned this fact in an affidavit, which is part of the Memo of Appeal.

6. He further submitted that so far the delay in re-filing the Memo of Appeal is concerned, the Appellant was residing in Trichy, Tamilnadu, which is far from Delhi and he was also unwell and that is why the defects pointed out by the Office could not be cured within the time and in doing so, there is delay of seven days only, so, the same may be condoned.

7. Now the point for consideration is:

- i) Whether the Appellant has explained the reasons for delay in filing the Memo of Appeal?
- ii) Whether the Appellant is entitled to get any other relief?

8. Considering the submissions made by the learned Lawyer and the facts mentioned in the Memo of Appeal as well as in the Miscellaneous Application, I find, so far defect No.8 is concerned, the Appellant filed this case as a shareholder and this fact has been mentioned in his affidavit and also in a separate letter addressed to the Registrar. So, the defect No.8 pointed out by the Office is hereby ignored.

9. So far the delay in re-filing the Memo of Appeal is concerned, for the reasons mentioned in the Miscellaneous Application, I think, it proper to condone the delay in re-filing the Memo of Appeal. Accordingly, the delay in re-filing the Memo of Appeal is hereby condoned.

10. 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.

11. With the aforesaid order, this Miscellaneous Application stands disposed of.

12. As prayed by learned Counsel, list the case before the Hon'ble Bench on 20.08.2018 for hearing.

(Abni Ranjan Kumar Sinha)
Registrar

Dictated and corrected by me.

(Abni Ranjan Kumar Sinha)
Registrar