

THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

M.A. No.41/2017

In

Un-numbered Company Appeal (AT) (Insolvency) No. /2017

In the matter of:

Karismaa Foundations Pvt. Ltd.

.... Applicant

Versus

Indust Cityscapes Construction Pvt. Ltd.

.... Respondent

Appearance: None for the Applicant.

13.12.2017

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 allegation in the application is that the main counsel met with an accident, as a result of which he suffered injuries. He was advised complete bed rest, hence the reason why there was delay in submitting the appeal after curing the defects. Therefore, the prayer is to extend the time by 61 days for compliance.

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):** - None appeared for the Applicant.

The aforesaid Appeal is against the order dated 06.07.2017 in T.C.P./97/(IB)/2017 of the Hon'ble NCLT, Chennai Bench. In page-1 of the appeal memorandum the Applicant/ Appellant states that the appeal is under Section 421 of the Companies Act, 2013 (hereinafter referred to as the Act) against the impugned order dated 06.07.2017 passed under section 433 (e) (f) of the Companies Act, 2013. Apparently, it cannot be under Act 18 of 2013 as there are no such sub-sections to section 433 of the new Act. A reading of the impugned order would make it clear

that it is an order passed under the I&B Code, 2016 (hereinafter referred to as the Code). A reading of the entire pleadings contained in the appeal memorandum and the stay application would also make it clear that the Applicant's case is also that the impugned order has been passed under the provisions of the Code. Therefore, the appeal can only be considered to have been filed under sub-section (1) to section 61 of the Code. Hence, the Scrutiny Section has erred in considering the appeal as one under section 421 of the Act and consequently the period of limitation computed for filing the appeal is also incorrect.

5. The instant appeal is seen presented before the Registry on 07.10.2017. The appeal when scrutinised on 10.10.2017 was found to be defective and hence on 11.10.2017 the Applicant was informed of the defects with a direction to cure them and submit the same within a period of seven days. The period of seven days expired on 18.10.2017. However, the appeal has been submitted after curing the defects only on 11.12.2017 and as there is a delay of about 54 days, the Section has put up the matter before me under sub-rule (2) to rule 26 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 noticed earlier, the impugned order is dated 06.07.2017. In para-6 of the appeal memorandum it is alleged that the order was made available to the Appellant on 07.07.2017. Hence, the period of limitation of 30 days starting from 08.07.2017 expired on 06.08.2017.

7. As noticed earlier, the Scrutiny Section has committed a mistake in considering the appeal under section 421 of the Act. As the present appeal is one under the provisions of the Code, it is apparent that the appeal has been presented much beyond the period of 30 days provided under sub-section (2) to section 61 of the Code for filing the appeal. The initial presentation of the appeal on 07.10.2017 is itself with a delay of about 62 days, which is much beyond the period provided under the provisions of the Code for filing the appeal. In such circumstances, the power under sub-rule (3) to rule 26 of the Rules cannot be invoked to extend the time for compliance given under sub-rule (2) to rule 26 of the Rules. Therefore, the matter be placed before the Hon'ble Appellate Tribunal for appropriate orders. Point answered accordingly.

8. **Point No.(ii):** - M.A. No.41/2017 dismissed.

List the matter before the Hon'ble Appellate Tribunal on 14.12.2017.

(C.S. Sudha)
Registrar