

**THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**NEW DELHI**

**M.A. No.34/2018**

**Un-numbered Company Appeal (AT) (Insolvency) No. \_\_\_\_/2018**  
**(F.No.26/09/2017/NCLAT/UR/497)**

**In the matter of:**

Kedar Mal Jakhetia & Ors.

.... Applicants

Versus

Axis Bank Ltd.

.... Respondent

Appearance: Mr. Vipul Ganda and Mr. Tarun Mehta, Advocates for the  
Applicant.

**13.02.2018**

This is an application stated to be filed under Rule 11 of the NCLAT Rules, 2016 (hereinafter referred to as the Rules) to extend the time granted for compliance given under sub-rule (2) to rule 26.

2. The allegation in the application is that the clerk of the counsel previously engaged by the applicants had collected the complete set of paper-books from the Registry on 05.10.2017 for the purpose of rectification of defects. However, due to certain administrative lapses the appeal could not be filed within the stipulated time. Subsequently, the applicants engaged the present counsel by the end of January, 2018, who re-drafted the appeal in accordance with the Rules. The delay occurred due to the inadvertence of the clerk of the previous counsel. Hence the prayer is to condone the delay of 115 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 learned counsel for the Applicants.

The aforesaid Appeal under Section 61 of the I&B Code, 2016 (hereinafter referred to as the Code) is against the order dated 17.08.2017 in I.A. 197/2017 with C.P.(I.B.) No.54/7/NCLT/AHM/2017 of the Hon'ble NCLT, Ahmedabad Bench.

5. The aforesaid appeal is seen presented before the Registry on 26.09.2017. The appeal when scrutinised on 04.10.2017 was found to be defective and so on the same day 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 11.10.2017. However, the appeal has been presented after curing the defects only on 07.02.2018. According to the Section there is a delay of 119 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 17.08.2017 is seen issued on 18.08.2017. The Section has computed the period of limitation from 19.08.2017. The allegation in para 2 of the Appeal Memorandum is that the copy of the impugned order was received on 26.08.2017. In support of the said allegation reference was made to page 35A in the Appeal Memorandum which is the xerox copy of the envelop in which the copy of the impugned order was sent to the party. The original covering letter dated 21.08.2017 of the NCLT along with which the copy was sent was handed over to me by the learned counsel for the applicants at the time of hearing (attached along with this order). Therefore, on the basis of the allegation in the Appeal Memorandum coupled with the document at page 35A, the starting point of limitation can be taken as 27.08.2017. When so computed the period of 30 days would expire on 25.09.2017.

7. The initial presentation of the appeal on 26.09.2017 is on the 31<sup>st</sup> day, i.e. with a delay of one day. Thereafter, the subsequent presentation after curing the defects on 07.02.2018 is much beyond the period of 30 days. 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 much 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.34/2018 disposed of accordingly.

List the matter before the Hon'ble Appellate Tribunal on 16.02.2018.

(C.S. Sudha)  
Registrar