

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

**M.A. No.42/2018**

**Un-numbered Company Appeal (AT) (Insolvency) No. /2018**  
**(F.No.01/02/2018/NCLAT/UR/78)**

**In the matter of:**

Andhra Bank ..... Applicant

Versus

M/s. F.M. Hammerle Pvt. Ltd. .... Respondent

Appearance: Shri P.B.A. Srinivasan, Advocate for the Applicant.

**19.02.2018**

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 branch of the Applicant Bank is situated at Chandigarh and therefore, delay was caused in curing the defects. Hence, the prayer is to condone the delay of one day in filing 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 17.11.2017 in CA No.191/2017 in CP(IB)No.30/Chd/Pb/2017 of the Hon'ble NCLT, Chandigarh Bench.

5. The aforesaid appeal is seen presented before the Registry on 01.02.2018. The appeal when scrutinised on 02.02.2018 was found to be defective and so 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 09.02.2018. However, the appeal was presented after curing the defects only on 15.02.2018. According to

the Section there is a delay of six 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 certified copy of the impugned order dated 17.11.2017 produced is a paid copy, which is seen issued on 24.01.2018. The Applicant is seen to have applied for a certified copy only on 19.01.2018, i.e., more than one month after the impugned order was passed. Therefore, the Section has rightly computed the period of limitation from 18.11.2017 and when so computed the period of 30 days would expire on 17.12.2017.

7. The initial presentation of the appeal on 01.02.2018 and the subsequent presentation after curing the defects on 15.02.2018 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.42/2018 disposed of accordingly.

List the matter before the Hon'ble Appellate Tribunal on 20.02.2018.

(C.S. Sudha)  
Registrar