

THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

M.A. No.44/2018

Un-numbered Company Appeal (AT) (Insolvency) No. /2018
(F.No.07/02/2018/NCLAT/UR/80)

In the matter of:

Prithvi Finvest Co. Pvt. Ltd.

.... Applicant

Versus

Olympia Credits & Mercantile Pvt. Ltd.

.... Respondent

Appearance: Shri Kapil Gupta, Advocate for the Applicant.

20.02.2018

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 the delay was caused due to inadvertent reasons and also because the Registered Office of the Applicant is at Kolkata. Hence, the prayer is to extend the time for compliance granted for 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 15.01.2018 in CP(IB)695/KB/2017 of the Hon'ble NCLT, Kolkata Bench.

5. The aforesaid appeal is seen presented before the Registry on 02.02.2018. The appeal when scrutinised on 03.02.2018 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 10.02.2018. However, the appeal was presented after curing the defects only on 17.02.2018. According to

the Section there is a delay of seven 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 15.01.2018 produced is a paid copy, which is seen issued on 30.01.2018. The Applicant is seen to have applied for the certified copy only on 29.01.2018. Therefore, the Section has rightly computed the period of limitation from 16.01.2018 and when so computed the period of 30 days after excluding the time taken for obtaining the certified copy, i.e., 29.01.2018 to 30.01.2018, would expire on 16.02.2018.

7. In the case on hand, the initial presentation of the Appeal under Rule 22 on 02.02.2018 is well within the period of 30 days. However, the subsequent presentation after curing the defects on 17.02.2018 is on the 31st day. 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, though it is just a day's delay, since it is beyond 30 days, it may not be proper to extend the time by invoking the power under sub-rule (3) to rule 26 of the Rules. Hence, the matter be placed before the Hon'ble Appellate Tribunal for appropriate orders. Point answered accordingly.

8. **Point No.(ii):** - M.A. No.44/2018 disposed of accordingly.

List the matter before the Hon'ble Appellate Tribunal on 22.02.2018.

(C.S. Sudha)
Registrar