

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

**M.A. No.49/2018**

**Un-numbered Company Appeal (AT) (Insolvency) No.     /2018**  
**(F.No.06/02/2018/NCLAT/UR/90)**

**In the matter of:**

Kusum Products Limited

.... Applicant

Versus

Union of India

.... Respondent

Appearance:       Ms. Heena George, Advocate for the Applicant.

**23.02.2018**

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 Appeal was filed on 06.02.2018. Though, the Advocate on 15.02.2018 approached the Registry to re-file the Appeal, he could not do so due to heavy rush at the counter. The delay is alleged to be not intentional. Hence, the prayer is to condone the delay of eight days in re-filing the appeal.

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 09.01.2018 in CA(IB) No.531/KB/2017 of the Hon'ble NCLT, Kolkata Bench.

5.     The aforesaid appeal is seen presented before the Registry on 06.02.2018. The appeal when scrutinised on 07.02.2018 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 14.02.2018. However,

the appeal was presented after curing the defects only on 21.02.2018. 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 09.01.2018 produced is a paid copy, which is seen issued on 07.02.2018. Therefore, the Section has rightly computed the period of limitation from 10.01.2018 and when so computed the period of 30 days after excluding the time taken for obtaining the certified copy, i.e., from 05.02.2018 to 07.02.2018 would expire on 11.02.2018 and not 08.02.2018 as recorded by the Section.

7. In the case on hand, the initial presentation of the appeal on 06.02.2018 is within the period of 30 days, however, the subsequent presentation after curing the defects on 21.02.2018 is apparently 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 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.49/2018 disposed of accordingly.

List the matter before the Hon'ble Appellate Tribunal on 26.02.2018.

(C.S. Sudha)  
Registrar