

THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

M.A. No.06/2018

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

(F.No.22/12/2017/NCLAT/UR/718)

In the matter of:

Rahul Gupta

.... Applicant

Versus

Mahesh Madhavan & Anr.

.... Respondents

Appearance: Shri Anish R. Shah, Advocate for the Applicant.

05.01.2018

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 the last working day of the Appellate Tribunal and thereafter the winter holidays ensued. The matter was refiled on the re-opening day. However, there were still some defects and hence the delay of three 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 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 08.12.2017 in C.P./625/(I.B.)/CB/2017 of the Hon'ble NCLT, Chennai Bench.

5. The instant appeal is seen presented before the Registry on 22.12.2017. The appeal when scrutinised on 26.12.2017 was found to be defective and hence on the same day 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 02.01.2018. However, the appeal has been submitted after curing the defects only on 04.01.2018 and as there is a delay of about two 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 08.12.2017. The certified copy of the impugned order is dated 12.12.2017. It is alleged in Para II of the appeal memorandum that the order was communicated to the Applicant on 22.12.2017. However, no proof of service of order has been produced to substantiate the same. Therefore, the office has rightly computed the period of limitation of 30 days starting from 13.12.2017. When so computed, the period of 30 days expires on 11.01.2018. The initial presentation on 22.12.2017 and subsequent presentation on 04.01.2018 are well within the period of 30 days for filing the appeal. Hence, exercising the power under sub-rule (3) to rule 26 of the Rules, the time for compliance granted under sub-rule (2) to Rule 26 is extended as prayed for in the application. Point answered accordingly.

7. **Point No.(ii):** - M.A. No.06/2018 allowed.

List the matter before the Hon'ble Appellate Tribunal on 09.01.2018.

(C.S. Sudha)
Registrar