

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

**M.A. No.08/2018**  
**Un-numbered Company Appeal (AT) (Insolvency) No. \_\_\_\_/2017**  
**(F.No.14/12/2017/NCLAT/UR/693)**

**In the matter of:**

Avance Logistics & Trading India Pvt. Ltd. .... Applicant

Versus

Bell Finvest (India) Ltd. .... Respondent

Appearance:       None for the Applicant.

**08.01.2018**

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 delay in filing the appeal after curing the defects occurred due to the personal difficulty of the counsel. The delay is not intentional and hence the prayer is to condone the delay of 10 days in refiling 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):** - None 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 11.09.2017 in C.P.No. 1245/I&BC/NCLT/MB/MAH/2017 of the Hon'ble NCLT, Mumbai Bench.

5. The instant appeal is seen presented before the Registry on 14.12.2017. The appeal when scrutinised on 15.12.2017 was found to be defective and hence on 16.12.2017 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 23.12.2017. However, the appeal has been submitted after curing the defects only on 05.01.2018 and as there is a delay of about 13 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 11.09.2017. It is alleged in Para 2 of the appeal memorandum that the order was received on 09.11.2017. This obviously appears to be a mistake because the certified copy of the impugned order is seen issued only on 15.11.2017. Therefore, the office has rightly computed the period of limitation of 30 days starting from 16.11.2017. When so computed, the period of 30 days expires on 15.12.2017.

7. The seven days' period for curing the defects granted under sub-rule (2) to rule 26 expired on 23.12.2017. However, the appeal was presented after curing the defects only on 05.01.2018, which is much after the period of 30 days for filing the appeal. It is true that the proviso to sub-section (2) to section 61 says that the period of 30 days can be extended by another 15 days, if sufficient cause for not filing the appeal is shown. However, this power can be exercised only by the Hon'ble Appellate Tribunal.

8. 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. 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.

9. **Point No.(ii):** - M.A. No.08/2018 disposed of.

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

(C.S. Sudha)  
Registrar