

THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

M.A. No.10/2018

Un-numbered Company Appeal (AT) (Insolvency) No. /2018
(F.No.21/12/2017/NCLAT/UR/714)

In the matter of:

Crompton Greaves Consumer Electricals Ltd. Applicant

Versus

K.P.R. Industries (India) Ltd. Respondent

Appearance: None for the Applicant.

11.01.2018

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 curing the defects occurred due to the intervening holidays for the Registry and because the authorized representative of the Applicant/ Appellant is a resident of Navi Mumbai. The flight of the authorized representative to Delhi was delayed, which also contributed to the delay in curing the defects. The delay is alleged to be beyond the control of the Applicant and hence the prayer is to extend the time for compliance by six days.

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 15.11.2017 in C.P.(I.B.) No.177/9/HDB/2017 of the Hon'ble NCLT, Hyderabad Bench.

5. The aforesaid appeal is seen presented before the Registry on 21.12.2017. The appeal when scrutinised on 22.12.2017 was found to be defective and hence on 23.12.2017 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 30.12.2017. However, the appeal has been submitted after curing the defects only on 09.01.2018 and hence 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. The certified copy of the impugned order dated 15.11.2017 issued free of cost is dated 21.11.2017. It is admitted in Para 2 of the appeal memorandum also that the order was communicated to the Applicant on 21.11.2017. Therefore, the Office was wrong in computing the limitation from 16.11.2017. The period of limitation of 30 days has to be computed from 22.11.2017 and when so computed, the period of 30 days expires on 21.12.2017.

7. The seven days' period for curing the defects granted under sub-rule (2) to rule 26 expired on 30.12.2017. The Registry was closed on account of Christmas vacation from 28.12.2017 to 02.01.2018. Therefore, the appeal ought to have been presented after curing the defects on the reopening day.

8. 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.

9. **Point No.(ii):** - M.A. No.10/2018 disposed of.

List the matter before the Hon'ble Appellate Tribunal on 12.01.2018.

(C.S. Sudha)
Registrar