

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

**M.A. No.11/2018**

**Un-numbered Company Appeal (AT) (Insolvency) No.     /2018**  
**(F.No.03/01/2018/NCLAT/UR/11)**

**In the matter of:**

JK Jute Mills Company Ltd.  
(Known as Geo Jute Ltd.)

.... Applicant

Versus

Surendra Trading Company

.... Respondent

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

**15.01.2018**

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 there was no intimation from the Registry that the appeal was defective. On 09.01.2018, when the Clerk of the Applicant's advocate made enquiries in the Registry, he was told that the appeal was defective. After removal of the defects, the appeal was attempted to be re-filed on 11.01.2018, but due to heavy rush he could not do it. Hence, the appeal could be filed only on 12.01.2018 causing a day's delay. The delay is not intentional and hence the prayer is to condone the delay of one day 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 04.12.2017 in C.P.(I.B.) 10/ALD/2017 of the Hon'ble NCLT, Allahabad Bench.

5.     The aforesaid appeal is seen presented before the Registry on 03.01.2018. The appeal when scrutinised on 04.01.2018 was found to be defective. It is reported by the Section that though attempts were made on the same day to intimate the person

concerned to rectify the defects, there was no response. Thereafter, the appeal was taken back on 09.01.2018 and after curing the defects it was re-submitted on 12.01.2018. According to the Section, the period of seven days' for curing the defects computed from 05.01.2018 expired on 11.01.2018. As there is a day's delay in re-submitting the appeal after curing the defects, 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 allegation in Para 2 of the appeal memorandum is that the Applicant received the certified copy of the order on 07.12.2017. However, the certified copy of the impugned order dated 04.12.2017 produced is a paid copy. The Applicant has no case that they had not received a free copy of the impugned order. Therefore, the period of limitation for filing the appeal has to be computed from 05.12.2017. The certified copy of the impugned order produced shows that application for the same was made on 06.12.2017 and the copy was issued on 07.12.2017. Hence, by excluding these two days the period of limitation of 30 days computed from 05.12.2017 would expire on 05.01.2018.

7. 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.11/2018 disposed of.

List the matter before the Hon'ble Appellate Tribunal on 16.01.2018.

(C.S. Sudha)  
Registrar