

THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

M.A. No.12/2018

Un-numbered Company Appeal (AT) (Insolvency) No. /2018
(F.No.18/12/2017/NCLAT/UR/703)

In the matter of:

EXPLO Media Pvt. Ltd.

.... Applicant

Versus

Ambience Pvt. Ltd.

.... Respondent

Appearance: Shri Anand K. Mishra and Ms. Mamta, Advocates for the
Applicant.

17.01.2018

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 Director of the Applicant Company was out of the City due to vacation which led to a delay of 15 days in presenting the appeal after curing the defects. The delay is alleged to be inadvertent and hence the prayer is to condone the delay in filing 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 03.11.2017 in C.P.(I.B.) 220/ND/2017 of the Hon'ble NCLT, New Delhi Bench - III.

5. The aforesaid appeal is seen presented before the Registry on 18.12.2017. The appeal when scrutinised on 19.12.2017 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 26.12.2017. However, the appeal was presented after curing the defects only on 15.01.2018. 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 03.11.2017 produced is a paid copy, which is seen issued on 18.12.2017. The Applicant is seen to have applied for a certified copy only on 12.12.2017, which again is much after the period of 30 days for filing the appeal. Therefore, the period of limitation of 30 days computed from 04.11.2017 expires on 03.12.2017. The initial presentation of the appeal on 18.12.2017 and the subsequent presentation after curing the defects on 15.01.2018 is apparently after the expiry of 30 days for filing the appeal.

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.12/2018 disposed of.

List the matter before the Hon'ble Appellate Tribunal on 18.01.2018.

(C.S. Sudha)
Registrar