

THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

M.A. No.22/2018

Un-numbered Company Appeal (AT) (Insolvency) No. /2018
(F.No.02/01/2018 /NCLAT/UR/06)

In the matter of:

Martin S. K. Golla

.... Applicant

Versus

State Bank of India & Anr.

.... Respondents

Appearance: Shri Dhaval Deshpande, Advocate for the Applicant.

22.01.2018

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 occurred as the Applicant is from Mumbai and therefore, the papers had to be sent there for making the necessary rectifications. Hence, the prayer is to condone the delay of ten days 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 13.11.2017 in M.A. 560 in C.P. No. 1148/ I & BC/NCLT/MB/MAH/2017 of the Hon'ble NCLT, Mumbai Bench.

5. The instant appeal is seen presented before the Registry on 02.01.2018. The appeal when scrutinised on 03.01.2018 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 10.01.2018. However, the appeal has been submitted after curing the defects only on 19.01.2018 and as there is a delay of about nine 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 13.11.2017. The allegation in para II of the Appeal Memorandum is that the copy of the impugned order was made available to the applicant on 27.11.2017. However, the certified copy of the impugned order issued free of cost is dated 21.11.2017. Therefore, the office has rightly computed the period of limitation of 30 days starting from 22.11.2017. When so computed, the period of 30 days expires on 21.12.2017.

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, the initial presentation of the appeal under Rule 22 on 02.01.2018 and the subsequent presentation after curing the defects on 19.01.2018 are well beyond the period of 30 days provided for filling the appeal. Hence, the matter be placed before the Hon'ble Appellate Tribunal for appropriate orders. Point answered accordingly.

8. **Point No.(ii):** - M.A. No.22/2018 disposed of.

List the matter before the Hon'ble Appellate Tribunal on 24.01.2018.

(C.S. Sudha)
Registrar