THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

M.A. No.25/2018
Un-numbered Company Appeal (AT) (Insolvency) No. /2018
(F.No.10/10/2017/NCLAT/UR/530)

In the matter of:

Eastern Plastix …. Applicant

Versus

Southern Polypet Pvt. Ltd. …. Respondent

Appearance: Shri Arjit Pratap Singh, Advocate representing Shri G. Kalyan Jhabakh, Advocate for the Applicant.

29.01.2018

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 Applicant is a Company situated at Chennai and hence arranging the documents took some time which caused the delay. The delay is alleged to be neither intentional nor deliberate. Hence, the prayer is to condone the delay of 90 days' in presenting 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 31.08.2017 in CP/474(IB)/CB/2017 of the Hon'ble NCLT, Chennai Bench.

5. The aforesaid appeal is seen presented before the Registry on 10.10.2017. The appeal when scrutinised on 11.10.2017 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 18.10.2017. However, the appeal was presented after curing the defects only on 24.01.2018. According to

the Section there is a delay of 98 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 free certified copy of the impugned order dated 31.08.2017 is seen issued on 06.09.2017. Therefore, the Office has rightly computed the period of limitation from 07.09.2017 and when so computed, the period of 30 days expires on 06.10.2017. The initial presentation of the appeal on 10.10.2017 and the subsequent presentation after curing the defects on 24.01.2018 are 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.25/2018 disposed of.

List the matter before the Hon'ble Appellate Tribunal on 30.01.2018.

(C.S. Sudha)
Registrar