

THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

M.A. No.29/2018

Un-numbered Company Appeal (AT) (Insolvency) No. /2018
(F.No.16/01/2018/NCLAT/UR/46)

In the matter of:

Birender Kumar

.... Applicant

Versus

M/s. Adel Landmarks Limited

.... Respondent

Appearance: Shri Sumeet Anand, Advocate for the Applicant.

31.01.2018

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 appeal which was returned for curing the defects was inadvertently placed in the rack of regular hearing matters by the office staff of the counsel for the Applicant. This was noticed by the counsel only on 23.01.2018. Immediately thereafter steps were taken to cure the defects and submit the appeal. This inadvertent mistake, which is stated to be neither deliberate nor intentional caused the delay. Hence, the prayer is to condone the delay of five 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):** - 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 18.09.2017 in (IB)-243(ND)/2017 of the Hon'ble NCLT, New Delhi Court-III.

5. The aforesaid appeal is seen presented before the Registry on 16.01.2018. The appeal when scrutinised on 17.01.2018 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 24.01.2018. However,

the appeal was presented after curing the defects only on 29.01.2018. According to the Section there is a delay of five 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 18.09.2017 is seen issued on 25.09.2017. Therefore, the Office has rightly computed the period of limitation from 26.09.2017 and when so computed, the period of 30 days expires on 25.10.2017. The initial presentation of the appeal on 16.01.2018 and the subsequent presentation after curing the defects on 29.01.2018 are apparently much 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.29/2018 disposed of accordingly.

List the matter before the Hon'ble Appellate Tribunal on 02.02.2018.

(C.S. Sudha)
Registrar