

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

**M.A. No.57/2018**

**In**

**Un-numbered Company Appeal (AT) (Insolvency) No. \_\_\_\_/2018**  
**(F.No.26/03/2018/NCLAT/UR/129)**

**In the matter of:**

M/s. Impex Services India Pvt. Ltd.

.... Applicant

Versus

M/s. DBA Enterprises LLP.

.... Respondent

Appearance:       None for the Applicant.

**13.03.2018**

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 delay was caused as time was taken to obtain legible copies of the dim annexures and also due to the intervening Holi holidays. The delay is alleged to be neither wilful nor intentional and hence the prayer is to condone the delay of two days' 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):** -     None 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 15.01.2018 in (IB)-480(ND)/2017 of the Hon'ble NCLT, New Delhi Bench.

5.     The aforesaid appeal is seen presented before the Registry on 26.02.2018. The appeal when scrutinised on 27.02.2018 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 06.03.2018. However, the appeal was presented after curing the defects only on 09.03.2018. According to the Section there is a delay of three 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 15.01.2018 given free of cost is seen issued on 29.01.2018. Therefore, the period of limitation computed from 30.01.2018 would expire on 28.02.2018.

7. The initial presentation of the appeal on 26.02.2018 is within the period of limitation. However, the subsequent presentation after curing the defects on 09.03.2018 is apparently after the expiry of 30 days for filing the appeal. 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.57/2018 disposed of accordingly.

List the matter before the Hon'ble Appellate Tribunal on 14.03.2018.

(C.S. Sudha)  
Registrar