

THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Un-numbered Company Appeal (AT) (Insolvency) No. /2018
(F.No.05/03/2018/ /UR/149)

In the matter of:

Sahara Q Shop Unique Products Range Ltd. Applicant

Versus

S. Gurumoorthi Respondent

Appearance: Shri Saurabh Jain and Shri Mustafa Alam, Advocates for the
Applicant.

15.03.2018

The aforesaid Appeal under Section 61 of the I&B Code, 2016 (hereinafter referred to as the Code) is against the order dated 15.12.2017 in C.P. No.1378/IBC/NCLT/MB/MAH/2017 of the Hon'ble NCLT, Mumbai Bench.

2. The Appeal is seen presented before the Registry under Rule 22 on 05.03.2018. The Appeal when scrutinised on 07.03.2018 was found to be defective and hence, on the same day the Applicant was informed of the defects with a direction to cure them within a period of seven days. One of the defects raised is that the Appeal is barred by limitation and hence, an application for condonation of delay is required. The Appeal was re-submitted on 13.03.2018 after curing all the defects except the defect relating to limitation. The Applicant did not agree to the defect of limitation raised by the Section and therefore, the matter has been put up before me for appropriate orders.

3. When the Appeal was initially presented on 05.03.2018, it was only the xerox copy of the impugned order dated 15.12.2017 that was submitted along with the Appeal. Therefore, the Section computed the limitation from 16.12.2017 and when so computed, the period of limitation of 30 days expires on 14.01.2018. Hence, the defect of limitation was raised by the Section. The allegation in para 2 of the appeal memorandum is that the impugned order dated 15.12.2017 is an ex-parte order and that the Applicant came to know of the order only on 15.02.2018 when an uncertified

copy of the impugned order was communicated along with an application for modification of the impugned order filed on 09.02.2018 before the Mumbai Bench. Therefore, the case of the Applicant is that as the date of knowledge is only 15.02.2018, the Appeal presented on 05.03.2018 is well within the period of limitation.

4. There is no proof on record to substantiate the aforesaid allegation of the Applicant that the date of knowledge is 15.02.2018. However, the certified free copy of the impugned order produced yesterday, i.e., on 14.03.2018 shows that it was issued on 13.03.2018. That being the position, the period of limitation computed from 14.03.2018 would expire only on 12.04.2018. If that be so, the initial presentation of the Appeal on 05.03.2018 is well within the period of limitation as provided under sub-section (2) to section 61 of the Code, which says that every appeal under sub-section (1) shall be filed within 30 days before the Appellate Tribunal. Hence, the defect of limitation no longer stands.

List the matter before the Hon'ble Appellate Tribunal on 16.03.2018.

(C.S. Sudha)
Registrar