

THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

M.A. No.28 of 2017

In

Un-numbered Company Appeal (AT) (Insolvency) No. /2017

In the matter of:

Machhar Polymer Pvt. Ltd.

.... Applicant

Versus

Sabre Helmets Pvt. Ltd. .

.... Respondent

Appearance: Ms. Aditi Dani, Advocate for the Applicant.

21.11.2017

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 defects could not be cured by the counsel for the Applicant owing to certain personal difficulties as he was required to travel out of town and hence, there is a delay of one day in re-submitting the appeal after curing the defects. The delay is neither intentional nor deliberate, therefore, the prayer is to condone the delay of one day in re-submitting 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 is against the order dated 28.09.2017 in C.P. No. 1333/I&BP/2017 of the Hon'ble NCLT, Mumbai Bench. Sub-section (2) to section 61 of the I&B Code, 2016 (hereinafter referred to as the Code) says that an appeal has to be filed within a period of 30 days.

5. The appeal is seen presented before the Registry on 06.11.2017. The appeal when scrutinised on 07.11.2017 was found to be defective and hence, on 08.11.2017 the Applicant was informed of the defects with a direction to cure the defects and re-submit the same within a period of seven days. The period of seven days expired on 15.11.2017. However, the appeal was re-submitted after curing the defects on 16.11.2017 and as there is a delay of one day, the Section has put up the matter before me under sub-rule (2) to rule 26 of the Rules for appropriate orders.

6. As noticed earlier, the date of the impugned order is 28.09.2017. A certified free copy of the impugned order is seen issued on 06.10.2017. Therefore, the Section has rightly computed the limitation from 07.10.2017. That being so, the period of 30 days expired on 05.11.2017 and the said day being a Sunday, the appeal has to be presented by 06.11.2017. In this case, the initial presentation of the appeal under rule 22 is on 06.11.2017, which is obviously within the period prescribed under sub-section (2) to section 61 of the Code.

7. Sub-rule (3) to rule 26 enables the Registrar to extend the time for compliance given under sub-rule (2) to rule 26. The power to extend the time given for compliance can be exercised by the Registrar, provided it is within the period of 30 days referred to in sub-section (2) to section 61 of the Code, as the Rules cannot override the provisions of the Act. Proviso to sub-section (2) to section 61 of the Code empowers the Hon'ble Appellate Tribunal to entertain an Appeal beyond the period of 30 days by extending the time by another 15 days. But this power can be exercised only by the Hon'ble Appellate Tribunal.

8. In this circumstance, the matter be placed before the Hon'ble Appellate Tribunal for appropriate orders. Point answered accordingly.

9. **Point No.(ii):-** M.A. No.28/2017 disposed of accordingly.

List the matter before the Hon'ble Appellate Tribunal on 22.11.2017.

(C.S. Sudha)
Registrar