

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

**M.A. No.69/2018**

**In**

**Un-numbered Company Appeal (AT) (Insolvency) No. /2018**

**(F.No.19/03/2018/NCLAT/UR/184)**

**In the matter of:**

M/s. Shivkala Developers Pvt. Ltd. & Anr. .... Applicants/ Appellants

Versus

M/s. Noble Cooperative Bank Ltd. .... Respondent

Appearance: Ms. Radhika Gupta, Advocate for the Applicants.

**04.04.2018**

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 in rectifying the defects as the papers had to be sent to the Directors of Applicant No.3 and 4, who are located in Mumbai. Therefore, the prayer is to condone the delay 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 Applicants.

The aforesaid Appeal under Section 61 of the I&B Code, 2016 (hereinafter referred to as the Code) is against the order dated 12.02.2018 in (IB)-525(ND)/2017 of the Hon'ble NCLT, New Delhi Bench.

5. The aforesaid appeal is seen presented before the Registry on 19.03.2018. The appeal when scrutinised on 20.03.2018 was found to be defective and so on the same day the Applicants were informed of the defects with a direction to cure them within a period of seven days. The period of seven days' expired on 27.03.2018. However, the appeal was presented after curing the defects only on 31.03.2018. According to the Section there is a delay of four 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 12.02.2018 produced is a paid copy and the same is seen issued on 06.03.2018. The allegation in para-2 of the appeal memorandum is that the impugned order was communicated to the Applicants by the IRP by way of a letter dated 21.02.2018, which was received by Applicant No.2 on 24.02.2018. Thereafter, the Applicants applied for and obtained a certified copy of the impugned order. Though, there is no proof on record to substantiate the allegation that the impugned order was communicated to the Applicants on 24.02.2018, they have produced a copy of the letter of the IRP dated 21.02.2018 (Annexure A-28 placed at page 534 of the Appeal paper book – Vol-III) by which they came to know of the impugned order. The period of limitation will then have to be computed from 22.02.2018 and not from 13.02.2018 as done by the Office, and when so computed the period of 30 days after excluding the time taken for obtaining the certified copy, i.e., 05.03.2018 and 06.03.2018 would expire on 25.03.2018.

7. The initial presentation of the appeal on 19.03.2018 is within the period of limitation. However, the subsequent presentation after curing the defects on 31.03.2018 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.69/2018 disposed of accordingly.

List the matter before the Hon'ble Appellate Tribunal on 06.04.2018.

(C.S. Sudha)  
Registrar