

THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

M.A. No.119/2018

Un-numbered Company Appeal (AT) (Insolvency) No. ___/2018
(F.No.07/06/2018/NCLAT/UR/490)

In the matter of:

Sunil Sharma Applicant/Appellant
Versus
Hex Technologies Pvt. Ltd. & Ors. Respondents

Appearance: Shri Gaurav Yadav, Advocate for the Applicant.

02.07.2018

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 grounds taken for condonation of delay in re-filing the memo of appeal for removing the defect is that the conducting Lawyer was suffering from thorax infection and due to that it could not be re-filed within the period prescribed under the law and there is delay of 46 days only in re-filing the appeal and the same may be condoned.

3. Heard learned counsel for the Appellant, perused the averments made in the Miscellaneous Application as well as the Office note. As per the office note, there is also delay of 14 months and seven days in filing the memo of appeal. As per Office note, the impugned order was passed on 11.10.2017 and the period prescribed for filing the Appeal is 30 days and according to the Office note it was required to be filed by 10.11.2017, whereas, it had been filed on 03.05.2018 and in such way, there is a delay of 14 months and seven days. It further appears that the defects were intimated to the parties on 05.05.2018 and the memo of appeal was returned to the parties on 27.06.2018 and it was re-presented on the same day, i.e., on 27.06.2018. As per Office note, there is delay of 52 days, whereas as per the averments made in the Miscellaneous Application there is delay of only 46 days. The learned counsel

further submitted that as per law he was required to re-file the memo of appeal within seven days from the date of intimation and he filed the same after 52 days and so there is delay of only 46 days and not 52 days as pointed out by the Office. He further submitted that since he was suffering from thorax infection, that is why, he could not re-file the memo of appeal within time.

4. Now the point for consideration is:

- i) Whether the Appellant has explained the reasons for delay in filing the Memo of Appeal?
- ii) Whether the Appellants are entitled to get any other relief?

5. Considering the averments made on behalf of the Appellant, Office notes and the grounds taken by the Appellant for re-filing the memo of appeal, I find that conducting Lawyer was suffering from thorax infection and so the memo of appeal could not be re-filed within time as required under Rule 26 of the Rules, according to which he was required to re-file the memo of appeal within seven days from the date of return. Considering the grounds taken by the Appellant, I think it proper to condone the delay in re-filing the memo of appeal. Accordingly, the delay in re-filing the memo of appeal is hereby condoned.

6. The Point No.1 is answered accordingly. So far as the Point No.2 is concerned, the Appellants are not entitled for any other relief. So far the limitation in filing the memo of appeal is concerned, the same is being placed before the Hon'ble Bench for consideration and admission on 04.07.2018.

7. With the aforesaid order, this Miscellaneous Application stands disposed of.

(Abni Ranjan Kumar Sinha)
Registrar

Dictated and corrected by me.

(Abni Ranjan Kumar Sinha)
Registrar