

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

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

**In the matter of:**

Prowess International Pvt. Ltd.

.... Appellant

Versus

Action Ispat & Power Pvt. Ltd.

.... Respondent

Appearance:       None for the Appellant.

**16.10.2017**

The aforesaid Appeal under Section 61 of the I&B Code, 2016 (hereinafter referred to as the Code) is against the order dated 15.03.2017 in Company Application No.(I.B.)18 (PB)/2017 of the Hon'ble NCLT, Principal Bench, New Delhi.

2.     The Appeal is seen presented before the Registry on 22.09.2017. The Appeal when scrutinized on 25.09.2017 was found to be defective and hence, on the same day the Appellant was informed of the defects and were directed to cure the defects and re-submit the same within a period of seven days. The Appeal is seen re-presented on 11.10.2017.

3.     One of the defects pointed out by the Section is that an application for condonation of delay has not been filed. The Section reports that all the other defects pointed out by the Registry except the pleading relating to limitation and the failure to file application for condonation of delay have been rectified. The counsel for the Appellant though informed did not agree to the defects pointed out and hence, the Section has put up the matter before me for appropriate orders.

4. 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. As stated earlier, the date of impugned order is 15.03.2017. Unlike sub-section (3) to section 421 of the Companies Act, 2013 (hereinafter referred to as the Act) which says that an Appeal has to be filed within a period of 45 days from the date on which a copy of the impugned order is made available to the person aggrieved, the Code is silent and does not indicate the date from which the limitation has to be computed. In such cases, the date from which limitation has to be computed can only be taken as the date of knowledge of the order.

5. Para-VI of the Appeal memorandum reads thus: - “Limitation: The Appellant/s declare that the Appeal is within the period specified in sub-section (3) of section 421 of the Act”. The basis on which the limitation has been computed by the Appellant is obviously incorrect as this is an Appeal under section 61 of the Code.

6. There is no specific or clear pleadings regarding the date on which the Appellant came to know of the impugned order. The pleading contained in Para-II of the Appeal memorandum reads- “The certified Order [sic] copy of the Order dated 15.03.2017 was updated on the website on 11.08.2017 received by the Authorized Representative at Delhi on 21.08.2017 and is finally received by the Appellant at Jamshedpur on 23.08.2017....”.

7. The copy of the impugned order produced is a paid copy. The date on which the Appellant applied for a certified copy is neither pleaded nor has it been entered or recorded in the paid copy. The Appellant has no case that they have not received a free copy of the order as entitled to under sub-section (3) to section 420 of the Act. There is also no pleading regarding the date on which the Appellant came to know of the impugned order. In these circumstances, the stand taken by the Scrutiny Section that the Appeal has been presented beyond the period stipulated in sub-section (2) to section 61 of the Code is justified.

8. Further, the date of return of the defective Appeal is 25.09.2017. The period of seven days within which the Appellant was to cure the defects and re-present the same expired on 02.10.2017, which was obviously a holiday. Therefore, the Appellant ought to have re-presented the Appeal after curing the defects on the re-opening day, i.e., on 03.10.2017. However, the Appeal has been re-presented after curing the defects only on 11.10.2017, which again is much beyond the period within which the Appeal ought to have been filed.

9. Today, none appeared for the Appellant. As the Appellant does not agree to the defects pointed out, the matter be placed before the Hon'ble Appellate Tribunal on 17.10.2017 for appropriate orders.

List the matter before the Hon'ble Appellate Tribunal on 17.10.2017.

(C.S. Sudha)  
Registrar