

THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

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

In the matter of:

Dilip Kumar Ari

.... Appellant

Versus

Matrikalyan Nursing Home Pvt. Ltd. & Ors.

.... Respondents

Appearance: Shri Shubhayu Roy, Advocate for the Appellant.

23.10.2017

The aforesaid Appeal has been presented under Section 421 of the Companies Act, 2013 (hereinafter referred to as the Act) against the order dated 18.08.2017 in C.P. No.179/2014 of the Hon'ble NCLT, Kolkata Bench.

2. As per the defects sheet there is two days' delay in presentation of the Appeal and though the Appellant was informed of the same, he failed to file an application for condonation of delay. Hence, the matter has been put up before me for appropriate orders.

3. Sub-section (3) to section 421 of the Act 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. In the case on hand, the date of impugned order is 18.08.2017. The copy of the impugned order produced is a paid copy. The application for certified copy is seen filed on 25.08.2017 and the copy was issued on 30.08.2017. Therefore, the period from 25.08.2017 to 30.08.2017 has to be excluded. The period of 45 days has to be computed from 19.08.2017 and when so computed, the period of 45 days expires on 08.10.2017, which was Sunday. The Appellant has presented the Appeal on 09.10.2017, which is within time. Therefore,

the stand taken by the Section that there is two days' delay in presentation of the Appeal is incorrect.

4. The Appeal when scrutinized on 10.10.2017 was found to be defective and hence, the Appellant was informed of the defects on the same day with a direction to cure the defects within a period of 7 days. The defective Appeal was taken back on 11.10.2017 and presented after curing the defects on 16.10.2017. Therefore, though the initial presentation was within 45 days, the subsequent presentation after curing the defects is beyond the period of 45 days as stipulated in sub-section (3) to section 421 of the Act. The matter be placed before the Hon'ble Appellate Tribunal for appropriate orders.

List on 24.10.2017 before the Hon'ble Appellate Tribunal.

(C.S. Sudha)
Registrar