

IN THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL

NEW DELHI

Company Appeal (AT) No. 34 of 2016

Mr. Praveen Shankaralyam

.... Appellant

Vs.

**M/s Elan Professional Appliances
Private Limited and Others**

.... Respondents

Present: For Appellant: - Mr. P.Nagesh, Advocate

For Respondents: - Mr. Ashish Middha, Advocate

ORDER

12.01.2017 - Heard the parties. From the record it is clear that all cause of action had taken place by 31st December 2010. The Company Petition was filed after more than five years in September 2015 and refiled in January 2016. The National Company Law Tribunal ("Tribunal" for short) Principal Bench, New Delhi dismissed the petition on the ground that the petition is barred by limitation in view of Section 433 of the Companies Act 2013 read with Article 113 of the Limitation Act 1963.

One of the ground taken by learned counsel for the appellant is that Company Petition having filed under the provisions of Section 397, 398 and 402 of the Companies Act 1956, the provision of Section 433 of the Act 2013 or application of Limitation Act 1963, which have come into force since 1st June 2016 will not be applicable.

Though the aforesaid submission seems to be attractive and it is assumed that Section 433 of Companies Act 2013 will not be applicable to the old cases, the appellant/petitioner before the Tribunal cannot escape the ground of delay and laches in preferring the Company petition as raised by the respondents. The appellant was removed as Director as back as on 31st December 2010 after notice to the appellant. There is no subsequent cause of action taken place thereafter. The appellant has not explained the delay in filing the Company Petition though there is delay of more than five years.

Learned counsel for the appellant submitted that the dividends are not paid in time, which are forwarded to his address at Ernakulum(Kerala) where he is not residing, but such submission cannot be accepted in view of the fact that the address at Ernakulum (Kerala) was given by the appellant to the company as one of his address and in the present appeal, the address for service on appellant, as set out is - D-3/11, South Star Apartments, Gandhi Nagar Behind KSRTC Bus Stand, Ernakulum-20.

For the reasons aforesaid, we are not inclined to entertain this appeal. The appeal is accordingly dismissed. However, there shall be no order as to cost.

(Justice S.J. Mukhopadhaya)
Chairperson

(Mr. Balvinder Singh)
Member (Technical)