

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No. 363 of 2017

IN THE MATTER OF:

M/s. Custodial Services (India) Pvt. Ltd. ...Appellant

Vs.

M/s. Metafilms (India) Ltd. ...Respondent

**Present: For Appellant:- Mr. R. Subramaniam and Mr. Arnav Dash, Advocates.
For Respondent:- Mr. Mohit D Ram and Mr. Rajul Shrivastav, Advocates.**

ORDER

16.11.2017- The Appellant has filed this appeal against the order dated 13th July, 2017 passed by the Adjudicating Authority (National Company Law Tribunal), Chennai Bench, Chennai in TCP/423/(IB)/2017, along with a petition for condonation of delay. The impugned order under challenge was passed on 13th July, 2017 and in terms of Section 421 of the Companies Act, 2013, it should have been filed within forty-five days i.e. by 27th August, 2017. However, the said date being a holiday, at best the appeal could have been filed by 28th August, 2017, but it was not filed within the said period.

2. Under sub-section (3) of Section 421 of the Companies Act, 2013, the Appellate Tribunal is empowered to condone the delay but not exceeding forty-five days. Therefore, if forty-five days is calculated from 27th August, 2017 it is 12th October, 2017 by which date it should have filed. However, we find that the appeal was initially presented on

11th October, 2017 with defect, therefore the paper book was taken back by the appellant. Thereafter, the appeal was filed on 23rd October, 2017. Thus there being delay beyond forty-five days, this Appellate Tribunal has no jurisdiction to condone the delay. For the said reason, petition for condonation of delay is rejected.

3. Apart from the aforesaid fact it has come to our notice that against the same very impugned order treating the order passed by the Adjudicating Authority under 'I&B Code' a TCP/423/(IB)/2017 has been filed by the Appellant under Section 61 of the Insolvency and Bankruptcy Code, 2016. If the impugned order has been passed by Adjudicating Authority under 'I&B Code', the appeal Section 421 of the Companies Act, 2013 is not maintainable.

3. For the said reasons also, we dismiss the appeal which is barred by limitation as also being not maintainable. No cost.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice Bansi Lal Bhat)
Member(Judicial)

Ar/uk