

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No. 352 of 2017

IN THE MATTER OF:

Dilip Kumar Ari

...Appellant

Vs.

**M/s. Matrikalyan Nursing
Home Private Limited & Ors.**

...Respondents

ORDER

24.10.2017- This appeal has been preferred by the appellant/petitioner against the judgment dated 18th August, 2017 passed by National Company Law Tribunal (hereinafter referred to as "Tribunal") Kolkata Bench, Kolkata, whereby and whereunder the application preferred by appellant under sections 397, 398 read with Sections 402, 403, 406 and other provisions of the Companies Act, 1956 and Sections 58 and 59 of the Companies Act, 2013 has been dismissed on the ground of delay.

2. We have heard learned counsel for the appellant and perused the record.

3. Admittedly, the appellant/petitioner(s) were aggrieved against the decision of the Board meeting held on 31st July, 2008 wherein decision was taken to increase the share capital of the company from 11,100

equity shares of Rs.10/- each to 17,800 equity shares of Rs.10/- each and it was also agreed that further shares to such extent would be allotted in favour of 2nd Respondent. Accordingly, 6,700 shares were allotted in favour of 2nd Respondent with the consent of the appellant & ors. (petitioner(s)).

4. Learned Tribunal has noticed that though such decision was taken on 31st July, 2008 but application under Sections 397, 398 read with Sections 402, 403, 406 and other provisions of the Companies Act, 1956 was filed after more than six years of delay. The Tribunal further noticed that 6,700 shares were allotted in favour of the 2nd Respondent with the consent of the appellant & ors (petitioner(s)). Taking into consideration the aforesaid fact, the application preferred by the appellant was dismissed on the ground of delay.

5. Learned counsel appearing on behalf of the appellant submits that the appellant/petitioner(s) were pursuing a civil suit before the City Civil Court at Calcutta being T.S.No. 3322 of 2007, therein the appellant had claimed right and entitlement over the assets of the company. However, such ground cannot be taken into consideration for the purpose of condoning delay in the application under Sections 397 & 398 wherein allegation of oppression and mismanagement has been alleged which is not the subject-matter of the suit. For the reasons aforesaid, we are not inclined to interfere with the impugned order 18th August,

2017. The appeal is accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order as to cost.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice Bansi Lal Bhat)
Member(Judicial)

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