

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

**Company Appeal (AT) (Insolvency) No. 183 of 2017**

**IN THE MATTER OF:**

**M/s. Custodial Services (India)  
Private Limited**

**...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-** This appeal has been preferred by Appellant against order dated 13<sup>th</sup> July, 2017 passed by the Adjudicating Authority (National Company Law Tribunal), Chennai Bench, Chennai in TCP/423/(IB)/2017, whereby and whereunder the transferred petition under Section 433 (e) (f) has not been treated as an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "I&B Code") in view of pendency of case under Section 11 of the Arbitration and Conciliation Act, 1996. The Tribunal adjourned the case *sine die*.

2. This appeal has been preferred under Section 61 of the 'I&B Code' with a petition for condonation of delay. Prayer has been made to condone the delay in preferring the appeal.

3. As per sub-section (3) of Section 61 of the 'I&B Code', the appeal required to be filed within thirty days and this Appellate Tribunal has been empowered to condone delay not exceeding fifteen days, if satisfied on the ground mentioned in the petition for condonation of delay.

4. Learned counsel for the Appellant accepts that the impugned order was passed on 13<sup>th</sup> July, 2017 in presence of counsel for the Appellant and the appellant had knowledge of the same on the said date and that the thirty days' period comes to 12<sup>th</sup> August, 2017. It is also accepted that there being Saturday and Sunday intervening and 15<sup>th</sup> August, 2017 being holiday, the matter could have been presented on 16<sup>th</sup> August, 2017. We accept the contention that if the case would have been filed on 16<sup>th</sup> August, 2017, this Appellate Tribunal could have accepted the appeal without delay. However, we find that there being defect the appeal was taken back and after removal of defects it was filed on 7<sup>th</sup> September, 2017. If thirty days' period is calculated, it comes to 12<sup>th</sup> August, 2017 and fifteen days thereafter that if allowed, the appeal should have been filed by 27<sup>th</sup> August, 2017. However, 27<sup>th</sup> August, 2017 being holiday at best the appeal could have been entertained if it would have been filed by 28<sup>th</sup> August. We find that after removal of the defects the appeal was filed on 7<sup>th</sup> September, 2017.

5. In the aforesaid circumstances, as the appeal has been filed beyond the period of forty-five days i.e. thirty days of filing and further fifteen days' period, this Appellate Tribunal could have allowed, we hold that this Appellate Tribunal has no jurisdiction to condone the delay.

6. The petition for condonation of delay is accordingly rejected. In the result, the appeal is dismissed being barred by limitation. No cost.

(Justice S.J. Mukhopadhaya)  
Chairperson

(Justice Bansi Lal Bhat)  
Member(Judicial)

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