

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 768 of 2019

IN THE MATTER OF:

Kuber Enterprises

...Appellant

Versus

Gammon India Ltd.

...Respondent

Present:

For Appellant :

**Mr. Gaurav Mitra, Mr. Vaibhav Mishra, Ms. V. Arora
and Mr. Aditya, Advocates**

O R D E R

30.07.2019 Learned counsel for the Appellant submits that in 'Terms of the Agreement', in case of failure, it was agreed that the application u/s 9 shall stand revived. It is alleged that the Respondent (Corporate Debtor) failed to comply with the 'Terms of Agreement' and in terms of the said agreement, the application under Section 9 of the 'I&B Code' should have been revived.

Learned counsel for the Appellant submits that though the impugned order was passed on 1st February, 2019; the 'free certified copy' of the same was prepared on 30th April, 2019 and it was received sometime in the beginning of May, 2019. Even if it is accepted, the appeal should have been filed in the 1st week of June. Learned counsel for the Appellant submits that there was summer vacation in the month of June in this Appellate Tribunal. Though even if we accept this submission, the appeal should have been preferred by the Appellant on the re-opening of the Appellate Tribunal i.e. on 1st July, 2019 but it has been filed on 22nd July, 2019, that is much beyond the delay of 15 days. Therefore, in view of Proviso to sub-section (2) of Section 61 of the 'I&B Code', this Appellate

Tribunal cannot condone the delay. However, this order will not come in the way of the Appellant to issue fresh Demand Notice u/s 8 of the 'I&B Code' and on default file fresh application u/s 9 of the 'I&B Code', which may be considered uninfluenced of the orders passed by the Adjudicating Authority and by this Appellate Tribunal.

The appeal stands disposed of with aforesaid observations.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice A.I.S. Cheema]
Member (Judicial)

[Kanthi Narahari]
Member (Technical)

/ns/gc