

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

**Company Appeal (AT) No. 154 of 2017**

**IN THE MATTER OF:**

**Smt. Hema Dhapola & Anr.**

**... Appellants**

**Versus**

**Nirvan Hospitals Private Ltd. & Ors.**

**... Respondents**

**Present: For Appellants : Shri Saurabh Kalia and Shri Harshit Aggarwal, Advocates**

**For Respondents Nos. 1 to 3 : Shri Amrendra Nath Tripathi and Shri Syed Muzammil Hasan, Advocates**

**ORDER**

**20.07.2017** This appeal has been preferred by the appellants against order dated 19.12.2016 passed by the National Company Law Tribunal (hereinafter referred to as 'Tribunal'), Allahabad Bench, Allahabad in Company Petition No. 115(ND) of 2012 along with a petition for condonation of delay. Originally, one petition for condonation of delay was filed by appellants on 13<sup>th</sup> April, 2017 which was not found proper, therefore, second time, another petition for condonation of delay has been filed on the ground that the appellants have brought on record all relevant facts.

2. We have heard the learned counsel for the appellants and learned counsel for Respondents Nos. 1 to 3.

3. From the record, we find that the impugned order was passed on 19<sup>th</sup> December, 2016 and the copy of the order was received by appellants on 17<sup>th</sup> January, 2017. Thereafter, a defective appeal was filed on 13<sup>th</sup> April, 2017, but the same was returned and later on the appeal was filed afresh on 11<sup>th</sup> May, 2017. Thus, we find that the appeal has been preferred after about four months of the receipt of the impugned order.

4. Section 421 of the Companies Act, 2013 relates to an appeal against the order of the Tribunal. As per sub-Section (3) of Section 421, every appeal under sub-section (1) is required to be filed within a period of forty five days from the date on which a copy of the order of the Tribunal is made available, provided that the Appellate Tribunal is empowered to entertain an appeal after the expiry of the period of forty-five days but within a further period not exceeding forty-five days as quoted below :

***“421. Appeal from orders of Tribunal.—(1) Any person aggrieved by an order of the Tribunal may prefer an appeal to the Appellate Tribunal.***

*(2) No appeal shall lie to the Appellate Tribunal from an order made by the Tribunal with the consent of parties.*

*(3) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order of the Tribunal is made available to the person aggrieved and shall be in such form, and accompanied by such fees, as may be prescribed:*

*Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days from the date aforesaid, but within a further period not exceeding forty-five days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period.*

*(4) On the receipt of an appeal under sub-section (1), the Appellate Tribunal shall, after giving the parties to the appeal a reasonable opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.*

*(5) The Appellate Tribunal shall send a copy of every order made by it to the Tribunal and the parties to appeal.”*

5. In this case, as the copy of the order of the Tribunal was made available to the appellants on 17<sup>th</sup> January, 2017, the appeal was required to have been filed within forty five days i.e. by 2<sup>nd</sup> March, 2017. However, defective appeal was initially filed on 13<sup>th</sup> April, 2017 which was taken back and fresh filing was made after about one month on 11<sup>th</sup> May, 2017. Thus, there being delay of more than further forty five days, this Appellate Tribunal has no jurisdiction to condone the delay.

6. For the reasons aforesaid, we reject the petition for condonation of delay. In the result, the appeal is dismissed being barred by limitation. However, there shall be no order as to costs.

[ Justice S.J. Mukhopadhaya ]  
Chairperson

[ Balvinder Singh ]  
Member (Technical)