

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Insolvency) No. 2353 of 2024

[Arising out of the Order dated November 13, 2024, passed by the 'Adjudicating Authority' (National Company Law Tribunal, Chandigarh Bench), Court-I in R.A. No. 16 of 2024 in C.P (IB) No.34/CHD/HRY/2023]

IN THE MATTER OF:

Suprio Ghosh S/o Subroto Ghosh

R/o 815, Badrinath, Jalvayu Towers,
Sector-56, Gurgaon, Haryana-122011
Email: suprioghosh@gmail.com

...Appellant

Versus

Bank of Maharashtra

Having its Branch Office at:-
Sushant Lok Branch, Gurgaon,
Ground Floor - 01-02, B Block,
Times Square Building, Sushant Lok-1,
Gurgaon, Haryana.
Email: bom1295@mahabank.co.in

...Respondent

Present:

For Appellant : Mr. Archit Chawla, Ms. Ridhi Bansal and Sagar R.,
Advocates.

For Respondent : Mr. Abhindra Maheshwari, Advocate

With

Company Appeal (AT) (Insolvency) No. 2354 of 2024

[Arising out of the Order dated November 13, 2024, passed by the 'Adjudicating Authority' (National Company Law Tribunal, Chandigarh Bench), Court-I in R.A. No. 17 of 2024 in C.P (IB) No.32/CHD/HRY/2023]

IN THE MATTER OF:

Nilanjana Ghosh W/o Suprio Ghosh

R/o 815, Badrinath, Jalvayu Towers,
Sector-56, Gurgaon, Haryana-122011
Email: suprioghosh@gmail.com

...Appellant

Versus

Bank of Maharashtra

Having its Branch Office at:-
Sushant Lok Branch, Gurgaon,
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...Respondent

Present:

For Appellant : Mr. Archit Chawla, Ms. Ridhi Bansal and Sagar R.,
Advocates.

For Respondent : Mr. Abhindra Maheshwari, Advocate

J U D G M E N T
(Hybrid Mode)

[Per: Arun Baroka, Member (Technical)]

This appeal arises out of order dated 13.11.2024 passed by Hon'ble National Company Law Tribunal, Chandigarh Bench ("Ld. Adjudicating Authority") in R.A. No. 16 of 2024 in C.P (IB) No.34/CHD/HRY/2023 and R.A. No. 17 of 2024 in C.P (IB) No.32/CHD/HRY/2023 ("Company Petition"), wherein NCLT had dismissed the Restoration Application filed by the Appellant. Two Appeals are interrelated and, therefore, are being taken up together.

An Application No. C.P (IB) No.32/CHD/HRY/2023 Suprio Ghosh Vs. Bank of Maharashtra under Section 94 of the Insolvency and Bankruptcy Code, 2026 ("Code") was filed on 03.12.2022 by the Appellant for initiation of insolvency Resolution Process and similarly another related Application C.P (IB) No.34/CHD/HRY/2023 Nilanjana Ghosh Vs. Bank of Maharashtra was filed. One Mr. Desh Deepak was appointed as the RP for filing of the report under Section 99 of the Code in both the cases. The RP had filed its report under Section 99 for consideration for admission, which is at pages 62 to 66

of the Appeal Paper Book (APB). The Respondent – Bank of Maharashtra had not filed any objections to the report of the RP.

2. Heard Counsels from both sides and also perused material on record. The Appellant contends that the matter was listed before NCLT on various dates, wherein the Appellant was present to press its application for the admission of the report filed by the RP, except for few dates. The list of dates, when the matter was fixed before the Adjudicating Authority is as under:

Date	Appearance by the Appellant	Court Proceedings
17.02.2023	Appeared	Resolution Professional was appointed.
27.04.2023	Appeared	As the Hon'ble Member (Technical) is holding Court with the Hon'ble Member (Judicial) of Allahabad Bench after lunch today, hence, the matter is adjourned to 12.10.2023.
24.07.2023	Appeared	As the Hon'ble Member (Technical) is holding Court with the Hon'ble Member (Judicial) of Allahabad Bench after lunch today, hence, the matter is adjourned to 12.10.2023.
12.10.2023	Appeared	Due to paucity of time, the matter could not be taken up today, hence adjourned to 11.12.2023.
11.12.2023	Not Appeared	It is seen from the records that the file was not taken up on the last date of hearing. The registry is directed to send e-notice to the learned counsels for the parties informing the next date of hearing, so that effective proceedings can be taken on the next date of hearing. List the matter on 23.01.2024.
23.01.2024	Appeared	It is seen that vide order dated 17.02.2023, Mr. Desh Deepak, IP was appointed as RP in this matter but till today no report has been filed by the IRP, which is otherwise required to be filed within 10 days. It is stated by learned counsel for the petitioner that he had supplied the information and documents to the RP but he has not received any response from the RP so far. It seems that the RP is not interested to file the report. Let this matter be reported to Chairman, Insolvency and Bankruptcy Board of

		India (IBBI) for further necessary action. In the meantime, learned counsel may file application for change of RP. Let the matter be listed on 20.02.2024.
20.02.2024	Appeared	It is stated by learned RP that he has filed his report vide Diary No. 552 dated 14.02.2024 but the same has not been placed before us today. He is directed to check the same with the Registry and the Registry is directed to place the same before us, if the same is free from defects on the next date of hearing. RP is also directed to supply a copy of the report to the counsel for the respondent bank during the course of the day and file affidavit of service within two days. Objections, if any, be filed by the respondent within one week after receiving the report with a copy m advance by the counsel opposite. Response thereto, if any, be filed within one week thereafter with a copy in advance to the counsel opposite.
03.04.2024	Not Appeared	Compliance affidavit has been filed by RP vide diary No. 03102/20 dated 01.04.2024. The same is taken on record. Despite clear-cut directions as per last order dated 20.02.2024, the RP has failed to file the report on DMS as well as the physical copy of the report. He is directed to do the same within three days subject to payment of cost of Rs. 5,000/- to the Prime Minister's National Relief Fund. Objections to the report, if any, be filed by learned counsel for the creditor bank within one week with a copy in advance to the counsel opposite. Response thereto, if any, be filed within one week thereafter with a copy in advance to the counsel opposite.
20.05.2024	Not Appeared	This application has been filed by the Resolution Professional to place on record the report under Section 99 of the Code. On last date of hearing, cost of Rs. 5000/- was imposed on Resolution Professional for not filing the report. Resolution Professional is directed to place on record the receipt of the payment of cost imposed only then this report filed under Section 99 will be taken on record. In the meantime, a date is requested by Ld. Counsel for the Creditor Bank for filing reply/objections to the report. Let the same be filed within one week with a copy m advance to the counsel

		opposite. Response to the objection, if any, be filed within next one week with a copy in advance to the counsel opposite.
08.07.2024	Not Appeared	IA 1201/2024 has been filed to place on record the report filed by the RP under Section 99. It is pointed out the Id. counsel for the Creditor-Bank that there are discrepancies in the assets and liabilities between the information. contained in net worth statement and nothing has been mentioned about borrowings of Rs.2,50,000/- for CC limit. It is pointed out by Id. RP that no net worth statement was provided by the petitioner Mr. Suprio Ghosh. Therefore, he could not clarify the net worth assessment of Mr. Suprio Ghosh. <u>There is no representation on behalf of the petitioner for last two dates, in these circumstances, it seems that the petitioner is neither interested to pursue the matter further, nor has he furnished the information to the RP. Thus, keeping in view the facts and circumstances of the present case and the statements made by the RP and Id. counsel for the creditor, IA No.1201/24 stands dismissed.</u>

3. The Appellant claims that Section 94 Application was dismissed on 08.07.2024 on the ground for non-appearance. The order of 08.07.2024 is as follows:

“CP(IB) No.34/Chd/Hry/2023

It is seen that on the last date of hearing, none appeared on behalf of the petitioner. Today also there is no representation on behalf of the petitioner. It seems that the petitioner is not interested to pursue the matter further. Keeping in view the facts and circumstances of the present case, the present petition bearing CP(IB) No.34/Chd/Hry/2023 stands dismissed for want of prosecution. File be consigned to the record room.”

4. The Appellant filed a Restoration Application under Rule 48(2) read with Rule 11 of the NCLT Rules, 2016 for seeking the restoration of C.P (IB) No.34/CHD/HRY/2023, which was also dismissed vide order dated 08.7.2024. While dismissing the restoration application the Adjudicating

authority has noted the facts and circumstances and tried to see whether sufficient cause has been shown in the restoration the application under Section 94. The analysis of the adjudicating authority is useful and is extracted as below:

“6. The petition i.e. CP(IB) No.34/Chd/Hry/2023 was filed on 05.12.2022 and the applicant has not appeared for last three dates (03.04.2024, 20.05.2024, 08.07.2024) consecutively. Under section 94, once the petition is filed with the registry the interim moratorium prescribed under section 96 triggers, which operates in rem and cause prejudice to the creditors of the petitioners.

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7. In the instant case, a writ petition was filed by the Respondent Bank i.e. CWP No. 3097 of 2024 titled Bank of Maharashtra v/s District Magistrate Gurugram. The Hon'ble High Court directed District Magistrate of Haryana to pass order under section 14 of SARFAESI Act 2002. We are conscious that the SARFAESI proceedings are stayed by virtue of section 96 of IBC. The filing and non-pursuance of section 94 petition is nothing but the abuse of process of law and needs to be hammered with iron hand.

8. Hence, when section 94 petition is filed by the petitioner then he has to be an extra careful while prosecuting his case. However, the petitioner- applicant herein acted in a casual manner, even the reasons for the non-appearance does not reflect any sufficient cause. Perusal of daily orders reveals that the petitioner has failed to appear on the last three consecutive dates (03.04.2024, 20.05.2024, 08.07.2024) but the applicant/ petitioner's counsel has offered a reason only for the non-appearance on 08.07.2024 and no explanation has been rendered by him for the non-appearance on previous two dates i.e. 03.04.2024 & 20.05.2024. Now, the petitioner-applicant herein has filed this restoration application and notably, they are appearing on every hearing of RST. A. without any issues. This inconsistent conduct and casual approach of petitioner in pursuing this petition reveals his true intention. Therefore, this pattern of appearance suggests that the petitioner's absence was not due to any genuine reason or reasonable cause but rather a deliberate attempt to delay or obstruct and thwart the SARFAESI proceedings. Moreover, this averse attitude of petitioner does not deserve any protection by this authority. "Law protects those who are vigilant" (Vigilantibus non dormientibus jura subveniunt).”

5. The Appellant claims that the Restoration Application was dismissed on frivolous grounds which does not have any nexus with Rule 48(2). The

Appellant claims that the bank has misled the Adjudicating Authority by giving three dates of not appearing, which are not correct i.e. 03.04.2024, 20.05.2024 and 08.07.2024. It also claims that for deciding on restoration application under Rule 48 of NCLT Rules, 2016 the Adjudicating Authority need not place reliance on Section 96. The Appellant claims that it is very much interested in submitting the repayment plan upon initiation of Insolvency Resolution Process. The NCLT has gone beyond the facts presented in the Restoration Application while dismissing the Restoration Application. Rule 48 provides that the Applicant in the restoration application has to show sufficient cause for non-appearance, only on the date fixed for hearing in which the Application/Petition of the Applicant has been dismissed for non-prosecution. However, in the present case, Adjudicating Authority has gone beyond the power vested to it under NCLT Rules and has stated that the Appellant has failed to appear on three consecutive dates. The Appellant claims that when the matter was taken up on 08.07.2024, it was on reopening date after summer vacation, wherein the Counsel was held up in various other courts and his non-appearance before the Adjudicating Authority was neither deliberate nor-intentional. It also claims that the Adjudicating Authority has wrongly recorded that the Appellant has failed to appear on three consecutive dates i.e. 03.04.2024, 20.05.2024 and 08.07.2024. It also claims that he was present on 03.04.2024 even though the records show otherwise. The Appellant also claims that it also appeared on 20.05.2024 but failed to mark appearance. But this fact also cannot be corroborated by any subsequent action to correct the mistake in the records. The Appellant claims that it was only on 08.07.2024, that it has failed to appear due to clashing of matters

before various courts. It is also contended that the Adjudicating Authority has gone beyond Rule 48 of NCLT Rules, 2016 for deciding the Restoration Application on merits but has gone beyond the facts on record to come to the conclusion that the Restoration Application deserves to be dismissed. On 08.07.2024 the report of the RP was available and the Adjudicating Authority, instead of considering the report filed by the RP has gone beyond the procedure and has held that the Applicant is not interested in pursuing application filed under Section 94 and dismissed it in default for which the restoration application was filed by the Appellant citing various reasons for non-appearance of Counsel on 08.07.2024.

6. The matter was stoutly resisted by the Respondent No.1 who claims that the objections were noted in detail by the Adjudicating Authority in its order RST. A. 16/2024. The Respondent No.1 – Bank of Maharashtra countering the restoration claims that the Appellant has been absent for last three hearings which shows that the applicant was not interested in pursuing the matter further. Furthermore, no sufficient cause or justification has been shown by the applicant for his non-appearance and restoration of the CP. It claims that the plea of the Appellant regarding internet connectivity is not tenable as the counsel for the Appellant has stated in the restoration application, that he was appearing before other courts through VC but could not justify his non-appearance before this Tribunal to VC on 08.07.2024. The applicant himself has affixed orders in the application, wherein his counsel was appearing before other Courts at Delhi through Video Conferencing mode, which implies that there were no connectivity issues which is claimed by the Applicant. Neither the counsel nor the applicant himself were present before

the Tribunal. The Appellant – Bank also claims that they have filed a Writ Petition CWP No. 3097 of 2024 titled Bank of Maharashtra v/s District Magistrate Gurugram for issuance of writ in the nature of mandamus directing the District Magistrate, Gurguram to get the Physical Possession of Property of Applicant. The Hon’ble High Court had passed order in bunch of writ petitions on 28.05.2024 directing the District Magistrate of State of Haryana to complete the activity of possession under Section 14 of SARFAESI Act till 21.8.2024.

7. Before proceeding further, we note the relevant extract of Rule 48 (2) which is as follows:

“48. Consequence of non-appearance of applicant. -

(1) Where on the date fixed for hearing of the petition or application or on any other date to which such hearing may be adjourned, the applicant does not appear when the petition or the application is called for hearing, the Tribunal may, in its discretion, either dismiss the application for default or hear and decide it on merit.

(2) Where the petition or application has been dismissed for default and the applicant files an application within thirty days from the date of dismissal and satisfies the Tribunal that there was sufficient cause for his non-appearance when the petition or the application was called for hearing, the Tribunal shall make an order restoring the same:

Provided that where the case was disposed of on merits the decision shall not be re-opened.”

[emphasis supplied]

While deciding the appeal herein, on the basis of Rule 48(2) and also facts and circumstances in the case, we will look into the justification provided and test whether there was sufficient cause for non-appearance in the petition, when it was called for hearing.

8. The claims of the Appellant in the affidavit that it was present on 03.04.2024, do not corroborate with the order sheet which has been

presented by the Appellant himself at Pg. No. 76 of APB, wherein there is no presence of the petitioner recorded before NCLT, Chandigarh. Similarly, the Appellant's claims that, he was present on 20.05.2024 before the Adjudicating Authority, but the records suggest otherwise. We find that the averments made by the Appellant are not based on facts and he has tried to cover up. We also note that the Appellant has been casual and negligent in his approach in pursuing his case before the Adjudicating Authority and to take undue advantage of the moratorium available to him. The Adjudicating Authority has noted that he has been consecutively absent for three dates and is attempting to stall the proceedings under the SARFAESI Act.

9. The Appellant has relied upon the ***Dilip B. Jiwarjika vs. Union of India & Ors. 2023 INSC 1018***. The Hon'ble Supreme Court in the said matter while upholding the constitutional validity of Section 95 to 100 has held that the interim moratorium under Section 96 is for the protection of the interest of the guarantors. The relevant excerpts of the judgments are reproduced below: -

"58. This must be contra-distinguished from the provisions for moratorium which are contained in Section 14 in relation to the CIRP under Part II. Section 14(1)(a) provides that on the insolvency commencement date, the institution of suits or continuation of pending suits or proceedings against the corporate debtor, including proceedings in execution shall stand prohibited by an order of the adjudicating authority. Clause (b) of subsection (1) of Section 14 empowers the adjudicating authority to declare a moratorium restraining the transfer, encumbrance, alienation or disposal by the corporate debtor of any of its assets or any legal right or beneficial interest therein. Significantly, the moratorium under Section 14 operates on the order passed by an adjudicating authority. The purpose of the moratorium under Section 96 is protective. The object of the moratorium is to insulate the corporate debtor from the institution of legal actions or the continuation of legal actions or proceedings in respect of the debt.

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86 (viii) The purpose of the interim-moratorium under Section 96 is to protect the debtor from further legal proceedings; and"

[Emphasis supplied]

There is no doubt that Section 96 provides interim protection to the debtor from further legal proceeding and the Appellant was enjoying the interim protection for long time but it was incumbent upon him to provide a repayment plan which has not happened in this case. It is argued by the Appellant that it was very well interested in submitting the repayment plan upon initiation of Insolvency Resolution Process and on 08.07.2024 the Adjudicating Authority was only to consider the report filed by the Resolution Professional. We note that it is the responsibility of the Appellant who has to work out a repayment plan and that he does it proactively and that can happen only if the Appellant is present in the proceedings. With three absents in the court proceedings on frivolous grounds, there is no proactiveness and initiative on the part of the Appellant.

10. The Appellant claims that he was held up before other courts and for that reason could not join the proceedings of NCLT on 08.07.2024. By the time he tried to join the proceedings through Virtual Court, the proceedings had ended. The Appellant also claims that he was ready for the submission of the repayment plan for the settlement of all dues basis the report of the RP. The Adjudicating Authority had to decide the admission or rejection. It was never the intent of the Appellant not to pursue the application for the Initiation of Insolvency Resolution Process. The Appellant was waiting for the order of admission based on the report filed by the RP as no objection on the report was filed by the Respondent Bank. On the other hand, a writ petition

was also filed by the Respondent Bank i.e. CWP No. 3097 of 2024 titled Bank of Maharashtra v/s District Magistrate Gurugram. The Hon'ble High Court had directed District Magistrate of Haryana to pass order under Section 14 of SARFAESI Act 2002. We are conscious of the fact that the proceedings get stayed by virtue of Section 96 of IBC. But, in the facts and circumstances of the case we find that the filing and non-pursuance of Section 94 petition is nothing but the abuse of process of law and needs to be dealt with strictly.

11. In the above background we find that for finalizing a repayment plan it is important that the legal proceedings are pursued diligently and in a vigilant manner. The Appellant has been very casual in his approach. Appellant has been absent for last three hearings which shows that the applicant was not interested in pursuing the matter further. And was trying to abuse the process of law by misusing the moratorium available to him under Section 96 of the Code. Furthermore, no satisfactory explanation has been provided by the Appellant for his non-appearance in the restoration application. The plea of the Appellant regarding internet connectivity is not tenable as the counsel for the Appellant was appearing before other courts through VC but his explanations for non-appearance before the Adjudicating authority through VC on 08.07.2024 is inexplicable. We are satisfied that the Appellant does not deserve any protection and restoration application needs to be dismissed for reasons as discussed herein.

Orders

12. Accordingly, we do not find any infirmity in the orders of the Adjudicating Authority in dismissing the restoration petition in both the related Appeals i.e Suprio Ghosh Vs. Bank of Maharashtra and Nilanjana

Ghosh Vs. Bank of Maharashtra. In the facts and circumstances of the case and in the light of aforesaid discussions, both the Appeals against dismissal of the restoration application are hereby dismissed. Parties to bear their own costs.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

**[Arun Baroka]
Member (Technical)**

**New Delhi.
May 30, 2025.**

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