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

**Company Appeal (AT) (Insolvency) No. 1075 & 1077 of 2024**

(Arising out of Order dated 01.05.2024 and 22.05.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Chandigarh Bench, Chandigarh in RST.A.(IBC)/11(CH)/2024 in CP (IB) No.89/Chd/Pb/2024)

**IN THE MATTER OF:**

Ashish Mohan Gupta
Through its POA Holder
Plot No 15, Industrial Area,
Phase I, Chandigarh ... Appellant

Versus

Union Bank of India ... Respondent

**Present:**

**For Appellant:** **Mr. Abhijeet Sinha & Mr. Anand Chhibbar, Sr. Advocates with Ms. Anannya Ghosh, Mr. Mrinalini Mishra, Mr. Brian Moses and Ms. Kashish Chabbra, Advocates.**

**For Respondent:** **Mr. PBA Srinivasan, Mr. V. Aravind, Ms. Srishti Bansal, Mr. Sumit Swami, Mr. Yash Pal Gupta and Mr. S. Shishir, Mr.Kamal Satija, Advocates.**

**J U D G M E N T**

**ASHOK BHUSHAN, J.**

These two Appeal(s) have been filed by the Personal Guarantor of the Corporate Debtor, challenging the orders dated 01.05.2024 and 22.05.2024 passed by National Company Law Tribunal, Chandigarh Bench, Chandigarh. By order dated 01.05.2024, Application filed by the Appellant under Section 94 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "**IBC**") has been dismissed for non-prosecution and by order dated 22.05.2024, Restoration Application (IBC)/11(CH)/2024 filed to restore the Company Petition has been

dismissed. Aggrieved by both the above orders, these two Appeal(s) have been filed.

2. Brief facts of the case necessary to be noticed for deciding the Appeal(s) are:

(i) An Application under Section 94 of the IBC being CP (IB) No.89/Chd/Pb/2024 was filed by the Appellant on 27.02.2024 and physical copy of the Application was filed on 28.02.2024. The Application was first listed on 17.04.2024, however the same was adjourned on account of members of the Bar abstaining and the matter was posted on 01.05.2024.

(ii) On 30.04.2024, at 08:00 PM, an email was sent by learned Counsel for the Appellant Shri Karan Gaba to the Registrar, requesting an adjournment due to personal difficulty. On 01.05.2024, the Application was called in the Court and since, no one appeared on behalf of the Applicant, the Application was dismissed for non-prosecution. On 01.05.2024, itself in the afternoon at 12:40 PM, learned Counsel for the Appellant appeared in the Court, by which time, the Application was already dismissed for non-prosecution. The Appellant was advised to file a Restoration Application. On 01.05.2024 itself, an Application for restoration was filed by the Counsel for the Appellant, where it was stated there being bereavement in the close family of the Counsel, the Counsel for the Appellant could not appear on 01.05.2024.

(iii) The Application was taken up on 08.05.2024 by the Adjudicating Authority, on which date, learned Counsel for the Appellant as well as learned Counsel for Union Bank of India (Financial Creditor) were present. The Financial Creditor appeared and prayed for time to file reply, the same was granted and the matter was adjourned to 30.05.2024.

(iv) The Union Bank of India has already initiated proceedings under Section 13, sub-section (2) of the SARFAESI Act, 2002 and e-auction notices were issued for the secured assets and 24.05.2024 was the date fixed for physical possession. The Appellant filed an application for preponement of the scheduled hearing, which was adjourned to 30.05.2024. The Application was taken up by the Adjudicating Authority on 14.05.2024, on which date Union Bank of India was granted time to file its reply. On 20.05.2024, the matter was fixed at 12:30 PM. and after hearing the parties order was reserved. The order dated 22.05.2024 was passed rejecting the Restoration Application.

(v) Aggrieved by the order dated 22.05.2024, these Appeal(s) have been filed.

3. We have heard Shri Anand Chhibbar, learned Senior Counsel and Shri Abhijeet Sinha, learned Senior Counsel appearing for the Appellant; Shri PBA Srinivasan and Mr. Yash Pal Gupta, learned Counsel has appeared for the Union Bank of India.

4. The learned Senior Counsel appearing for the Appellant, challenging the order submits that on the date when Application was listed before the Adjudicating Authority on 01.05.2024, effectively was the first date of hearing and on which date Counsel for the Appellant Shri Karan Gaba, could not appear on account of bereavement in close family member, with regard to which he has sent an email on previous evening of 30.04.2024 at 08:00 PM. He submits that Restoration Application was filed on same day, when Counsel returned and went in the Court. It is submitted that sufficient cause was shown by the Appellant for restoring the petition. It is submitted that Union Bank of India has no right to oppose the Restoration Application, nor they were entitled to be heard at this stage. In Section 94 Application, no proceedings has yet been taken by the Adjudicating Authority. It is submitted that Adjudicating Authority after making the above observation in paragraph-26 has further proceeded to consider the Application on merits and had made observations that Applicant has not approached the Tribunal with clean hands and is involved in Forum shopping. It is submitted that earlier proceedings, which have been noticed by the Adjudicating Authority under the SARFAESI Act, initiated by the Union Bank of India were not relevant for deciding the Restoration Application. The Application under Section 94 was not up for consideration, so as to enable the Court to examine the Application on merits. The observation of the Adjudicating Authority that no grounds have been made to restore the petition, is wholly erroneous. The Adjudicating Authority has taken too technical view in rejecting Restoration Application, which was on the ground of Counsel having not

been able to appear on the ground that he went to attend the cremation of close family member.

5. The learned Counsel appearing for the Union Bank of India, opposing the submissions of the Appellant, submits that the Appellant has earlier filed Section 94 Application on 02.06.2023, in which Application, defects were not cured and the same was withdrawn. It is submitted that Application filed by the Appellant on 27.02.2024 was to derail the proceedings initiated by the Union Bank of India under the SARFAESI Act to take the possession of the secured assets, which have already been sold and only the possession has to be undertaken by the Bank. After filing the Application on 27.02.2024, the Appellant has been representing the Bank that moratorium has commenced by filing the Application and Bank cannot take any proceedings. It is submitted that the Appellant is threatening the Bank officials for contempt action. It is submitted that Respondent Bank had every jurisdiction to oppose the Restoration Application. It is submitted that the Appellant has filed multiple writ petitions in the Punjab and Haryana High Court and the amount directed by the High Court has not been deposited by the Appellant. The Application filed by the Appellant was not bonafide Application and the Restoration Application has rightly been rejected by the Adjudicating Authority by the impugned order. The learned Counsel for the Respondent has also placed reliance on the judgment of Manipur High Court in ***CRP No.40 of 2014 in Longjam Bijoy Singh and Ors. Vs. Shri Keisham Irabot Singh and Anr.*** decided on 04.02.2022.

6. We have considered the submissions of learned Counsel for the parties and perused the record.

7. As noted above, Application under Section 94 was filed by the Appellant on 2702.2024 and physical copy of the Application was filed on 28.02.2024 and the first date of hearing of the Application was 17.04.2024, on which date following order was passed:

> "In view of the Resolution of the Bar dated 16.04.2024, the Members of the Bar have abstained from Court work today. Therefore, the present petition is adjourned to 01.05.2024, in the supplementary list."

8. 01.05.2024 was the next date for hearing before the Adjudicating Authority. On 30.04.2024 at 08:00 P.M., the Counsel for the Appellant, Shri Karan Gaba sent an email to the Registrar, which is as follows:

> "Respected sir/madam,
>
> That i Adv. Karan Gaba having PH/224/2020 is a counsel in case no. CP (IB) No. 89/chd/pb/2024 titled as Ashish Mohan Gupta (PG) is listed for Admission of the case at item no. 3 before Bench no. 1 on 01.04.2024 and is praying for an adjournment on the ground of some unforeseen personal difficulty in my family.
>
> Regards,
>
> Adv. Karan Gaba
> PH/224/2020
> Office at: House no. 1375, Sector-33c, Chandigarh.
> Phone no- 8699001158"

9. On 01.05.2024, the Application came up for hearing before the Adjudicating Authority, on which date the Adjudicating Authority passed an order, dismissing the petition for non-prosecution. The order dated 01.05.2024 is as follows:

"Since, there is no representation on behalf of the petitioner despite repeated calls, therefore, the present petition stands ***dismissed for non-prosecution***.

File be consigned to the record room."

10. On 01.05.2024 itself, an Application for Restoration was filed by the Appellant. The Application was supported by affidavit of Shri Karan Gaba, learned Counsel appearing for the Appellant. The Application is a short Application, which stated following for restoration of the case:

"1. That the matter was listed today I.e. 1.5.24.

2. That the matter was listed for preliminary hearing.

3. That the counsel undersigned was not able to attend the court on account of a demise in the close family of the counsel.

4. That the counsel had sent an email dated 30.4.24 addressed to the Respected Registrar, praying for an adjournment in the matter on account of the same with a request to place the same before the Hon'ble Court. That the email is reproduced:

From: Karan Gaba karangaba16@gmail.com
Date: Tue, 30 Apr 2024 at 20:00
Subject: Request for an adjournment.
To: registrar-chd@nclt.gov.in

Respected sir/madam,

That i Adv. Karan Gaba having PH/224/2020 is a counsel in case no. CP (IB) No. 89/chd/pb/2024 titled as Ashish Mohan Gupta (PG) is listed for Admission of the case at item no. 3 before Bench no. 1 on 01 .04.2024 and is praying for an adjournment on the ground of some unforeseen personal difficulty in my family.

Regards,

Adv. Karan Gaba
PH/224/2020
Office at: House no. 1375, Sector-33c, Chandigarh.
Phone no- 8699001158.

5. That the cremation was scheduled in the morning today I.e. 1.5.24 at 10.30 Am.
6. That the counsel was hence unable to attend the court when the case was called up .
7. That when the counsel reached the court at about 12.40 PM, today, the counsel was informed that the matter has been dismissed in default for non prosecution.
8. That a request was made to the Hon'ble Bench . however since the order was already passed in open court, the counsel is making the present application for restoration.
9. That the non appearance was bonafide and on account of the reasons as mentioned below.
10. That the applicant is not to gain by no appearing in the matter.
11. That the party may not be penalised for the default of the counsel.

That it is therefore respectfully prayed that the Court may be pleased to restore the case / application in the interest of justice.

Chandigarh
Dated 1.5.24

for the applicant
through counsel

Sd/-

Karan Gaba
Advocate"

11. The Adjudicating Authority heard the Application and by the impugned order has dismissed the Application. Aggrieved by the order dismissing the Restoration Application, this Appeal has been filed. We need to consider the submissions of the Appellant with respect to the order dated 22.05.2024. The Adjudicating Authority had granted opportunity to the Respondent Bank to file reply to the Restoration Application. The submission of both the Counsel were heard in detail. The Adjudicating Authority in paragraph -26 has considered the point as to whether there is

any reasonable ground established by the Applicant for restoration of the Application. Following are the observations made in paragraph-26 of the judgment:

> "26. The third point of determination is whether there is any reasonable ground established by the applicant for restoration of the petition under Section 94 of the Code. No doubt, learned senior counsel for the applicant has stated that Mr. Karan Gaba, counsel for the applicant had sent an email to the Assistant Registrar of this Bench on 30.04.2024 seeking adjournment on the ground of some unforeseen personal difficulty in his family, however, the said email is silent about the fact as to what was the unforeseen personal difficulty and the date mentioned for hearing was 01.04.2024 instead of 01.05.2024. Moreover, the matter was already listed in the cause list, therefore, when the email which was sent to the Assistant Registrar after Court hours i.e. after 8:00 p.m. on 30.04.2024, then it was not incumbent upon him to bring it to the notice of this Bench. Moreso, there were other two counsels for the applicant, namely, Mr. Kartik Goyal and Mr. Sandeep Suri but none of them appeared for making a request regarding the unforeseen personal difficulty in the family of Mr. Karan Gaba, Advocate. Apart, no specific relationship of the deceased (uncle) has been mentioned with Mr. Karan Gaba, Advocate and no death certificate has been placed on record. Thus, the Authorities (supra) ***RAFIQ and Another and Komal Gupta*** relied upon by the Ld. counsel for applicant are not distinguishable."

12. Further, it is relevant to notice that Adjudicating Authority proceeded to make observations that Applicant has not approached the Tribunal with clean hands rather he has involved in Forum shopping. The Adjudicating Authority has noticed the litigations in paragraph-27 of the judgment. In

paragraph 28, the Adjudicating Authority again noticed the details of filing of writ petitions by the Appellant before the High Court and the order passed therein and the Application under Section 94 filed on 27.02.2024 and physically filed on 28.02.2024. Paragraph 28 of the judgment is as follows:

> "28. Further, it is evident from the noting on the main CP No. 89 of 2024 that it was initially filed on 28.02.2024 but it was under objections and after removing the objections, it was refiled by Diary No. 00720 dated 27.03.2024. Thus, a moratorium under Section 96 of the Code will come into force w.e.f. 27.03.2024 and not before that date in view of the authority (supra) ***Jeny Thankachan*** of Hon'ble Kerela High Court. To sumup, the above-mentioned chronological facts reveal that in the year 2022, the applicant filed two writ petitions i.e. CWP No. 1972 of 2022 and CWP No. 29209 of 2022 before the Hon'ble High Court and despite getting the order from the Hon'ble High Court no amount except 33 lakhs was deposited by the applicant in pursuance of order dated 19.12.2022 passed by Hon'ble High Court in CWP No. 29209/2022. Thereafter in the year 2023, the applicant again approached the Hon'ble High Court in the Writ Petition by special mentioning it before the Hon'ble Division Bench (Vacation) on 14.06.2023 but the said writ petition was not filed before the Hon'ble High Court and similarly the petition under Section 94 of the Code was e-filed in the year 2023 but the same was not physically filed and at last the petition under Section 94 was filed on 27.03.2024, which has been dismissed for non-prosecution on 01.05.2024. It is apt to observe herein that in the interregnum, the applicant through his counsel sent letters to the Bank as well as to the Tehsildar to face contempt proceedings against violation of the moratorium on the basis of the petition under Section 94 of the Code which is stated to be filed in the year 2023 despite the fact that no such petition under Section 94 was finally filed in the Registry of this Bench."

13. The Adjudicating Authority has come to the conclusion that the Applicant has not approached the Tribunal with clean hands and was not entitled to the relief of restoration of the petition. In paragraphs 29 and 30, following have been observed:

> "29. In view of the discussion above, it is amply clear that the applicant has misused the process of law in order to avoid and stall the proceedings under the SARFAESI Act, 2002 thus, he has not approached this Tribunal with clean hands and is not entitled to the relief for restoration of the petition under Section 94 which is already dismissed for non-prosecution.
>
> 30. As a sequel to the reasons recorded hereinbefore, we find no reasonable ground to restore the present petition bearing CP (IB) No. 89/Chd/Pb/2024 and consequently this restoration application i.e. RST. A (IBC)/11(CH)/2024 is dismissed, however, we refrain ourselves from imposing any cost upon the applicant."

14. The submission, which has been pressed by the learned Counsel for the Appellant is that while considering the Application for restoration, the Adjudicating Authority ought not to have entered into the merits of the Application, since it was the Restoration Application, which was listed before the Adjudicating Authority and not the Application under Section 94. On 20.05.2024, when the Application was heard, it was only the Restoration Application filed by the Appellant to recall the order dated 01.05.2024 dismissing the Application for non-prosecution. When Application is dismissed for non-prosecution, the Appellant is entitled to show that there was sufficient cause for non-appearance of the Counsel. Expression "sufficient cause", came up for consideration before the Hon'ble Supreme Court in ***(1987) 2 SCC 107 – Collector, Land Acquisition,***

***Anantnag and Anr. vs. Mst Katiji and Ors.*** The Hon'ble Supreme Court has held that the expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner, which subserve the ends of justice. In paragraph-3 of the judgment, following was observed:

> **"3.** The legislature has conferred the power to condone delay by enacting Section 5 [ Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.] of the Indian Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on "*merits*". The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice — that being the life-purpose for the existence of the institution of courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:
>
> "*1.* Ordinarily a litigant does not stand to benefit by lodging an appeal late.
>
> *2.* Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
>
> *3.* "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the "State" which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a step-motherly treatment when the "State" is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file-pushing and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant-non-grata status. The courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits. Turning to the facts of the matter giving rise to the present appeal, we are satisfied that sufficient cause exists for the delay. The order of the High Court dismissing the appeal before it as time-barred, is therefore, set aside.

> Delay is condoned. And the matter is remitted to the High Court. The High Court will now dispose of the appeal on merits after affording reasonable opportunity of hearing to both the sides."

15. Now, we come to the reasons given by the Appellant in the Restoration Application. We have already extracted the entire Application filed by the Appellant for restoration, where, it was stated by the Counsel for the Appellant on affidavit that Counsel was unable to attend the Court on account of demise of close family member of the Counsel. The Counsel has also referred to his email dated 30.04.2024 addressed to the Registrar, praying for an adjournment.

16. Although, we are of the view that sending email by the Appellant does not oblige the Court to adjourn the matter when date is fixed, there had to be a proper request to the Court, when case is called or an appropriate Application for adjournment is filed. No one appeared on 01.05.2024, hence, the Adjudicating Authority dismissed the Application for non-prosecution. It is also stated in the Application that the Counsel reached the Court at 12:40 PM. and a request was made to the Bench also, but since the order was passed in the open Court, the Appellant was advised to move an Application for restoration. Then on the same day, the Application for restoration was filed. It is relevant to notice that Application is supported by an affidavit of the Counsel and there is no reason to disbelieve the cause given in the Application for non-appearance. The Adjudicating Authority in paragraph-26 has observed that no specific relationship of the deceased has been mentioned with Shri Karan Gaba and further, no death certificate has been placed on record. The question to be

considered was, as to whether there was any sufficient case for non-appearance on 01.05.2024. It was not the case of the Bank that no death took place. The Adjudicating Authority has never directed the Appellant to file the copy of death certificate. We are, thus, of the view that observations made in paragraph-26 that '*no specific relationship of the deceased has been mentioned'* and *'no death certificate has been placed on* record' are not sufficient ground to reject the cause given in the Restoration Application for restoration. Further, we have noticed that the Adjudicating Authority embarked upon the earlier litigations under Section 13, sub-section (2) between the parties and came to the conclusion that Applicant has not approached the Tribunal with clean hands and rather he is involved in Forum shopping, as was found in paragraph 27. It is relevant to notice that Application under Section 94, was not up for consideration and the consideration on merits of the Application was uncalled for. Observation of the Adjudicating Authority that the Appellant has not approached the Tribunal with clean hands and is involved in Forum shopping, were the observations, which were made prematurely. It was open for the Adjudicating Authority to consider all the above issues when Application under Section 94 comes for consideration. At the time of consideration of Restoration Application, the Adjudicating Authority ought to have confined itself to the question of sufficient cause given by the Appellant for restoration of the case. In this reference, we may also refer to judgment of the Hon'ble Supreme Court in ***(2000) 3 SCC 54 in G.P. Srivastava vs. R.K. Raizada and Ors.***, wherein the Hon'ble Supreme Court has observed that while considering the question of sufficient cause for non-appearance,

other circumstances anterior in time cannot be relied. In paragraph 7 of the judgment, following has been held:

> "**7.** Under Order 9 Rule 13 CPC an ex parte decree passed against a defendant can be set aside upon satisfaction of the Court that either the summons were not duly served upon the defendant or he was prevented by any "sufficient cause" from appearing when the suit was called on for hearing. Unless "sufficient cause" is shown for non-appearance of the defendant in the case on the date of hearing, the court has no power to set aside an ex parte decree. The words "was prevented by any sufficient cause from appearing" must be liberally construed to enable the court to do complete justice between the parties particularly when no negligence or inaction is imputable to the erring party. Sufficient cause for the purpose of Order 9 Rule 13 has to be construed as an elastic expression for which no hard and fast guidelines can be prescribed. The courts have a wide discretion in deciding the sufficient cause keeping in view the peculiar facts and circumstances of each case. The "sufficient cause" for non-appearance refers to the date on which the absence was made a ground for proceeding ex parte and cannot be stretched to rely upon other circumstances anterior in time. If "sufficient cause" is made out for non-appearance of the defendant on the date fixed for hearing when ex parte proceedings were initiated against him, he cannot be penalised for his previous negligence which had been overlooked and thereby condoned earlier. In a case where the defendant approaches the court immediately and within the statutory time specified, the discretion is normally exercised in his favour, provided the absence was not mala fide or intentional. For the absence of a party in the case the other side can be compensated by adequate costs and the lis decided on merits."

17. The learned Counsel for the Respondent has also placed reliance on judgment of the Manipur High Court in ***Longjam Bijoy Singh and Ors. Vs. Shri Keisham Irabot Singh and Anr.*** In the above case, a suit filed

by the plaintiff was dismissed twice and was restored and the suit was filed in the year 2006, Misc. Application was filed in the year 2013 for bringing legal heirs on the record, which was also dismissed for default. In the above circumstances, when the Application came before the Court, the same was dismissed by the Civil Judge Senior Division. Against which order CRP petition was filed in the High Court. In the above reference, the High Court in paragraph 6 has made following observations:

> "**[6]** The above being the legal position, it has to be seen whether the applicants in the miscellaneous case before the Trial Court were able to show their *bonafides* and establish 'sufficient cause' by demonstrating that the mistake of their counsel, if any, should be condoned. Though Mr. N. Mahendra, learned counsel, would assert that the failure to appear on the relevant day alone has to be taken into consideration, this Court would be justified in examining the conduct of the party all through to ascertain whether 'the failure to appear' was a chronic phenomenon and not a stray instance. As pointed out by the Supreme Court, the effort of the Court should be to see that justice is done, which would include justice to both the parties to the litigation. That being so, a defendant cannot be penalized and made to suffer the rigours of litigation over decades, despite the plaintiff being lax and careless in prosecuting the case."

18. The observations made in paragraph 6, clearly indicate that Applicants were unable to show their *bonafides* and establish sufficient cause. It was further noticed in the facts of the said case that a defendant cannot be penalized and made to suffer the rigours of litigation over decades. The judgment of the above case was on the facts of the said case

and has no bearing in the present matter. As noticed above, the present was a case where 01.05.2024 was first effective date in the Application under Section 94.

19. We, thus, are of the view that sufficient cause had been shown by the Appellant for restoration of the Application. The Adjudicating Authority committed error in rejecting the Application by the impugned order dated 22.05.2024. We may further observe that the Application under Section 94 was not up for consideration, hence, observations made by the Adjudicating Authority that Applicant has not approached the Tribunal with clean hands and rather he is involved in Forum shopping, were uncalled for and premature. The Adjudicating Authority could have considered the merits of the Application under Section 94 and the conduct of the Appellant, when the Application comes for consideration. The fact as to whether the Appellant has misused the process of law, as found by the Adjudicating Authority in paragraph 29, are again issues, which were required to be considered at the time when Application under Section 94 come up for consideration. We, however, make it clear that we are not expressing any opinion on the findings returned by the Adjudicating Authority in paragraphs 27, 28 and 29 and it shall be open for the Adjudicating Authority to consider afresh any issues on merits of the Application, when the Application comes for consideration.

20. In view of the foregoing discussions and our conclusions, we are satisfied that sufficient cause was shown by the Appellant for allowing Restoration Application for recalling of order dated 01.05.2024, dismissing the Application for non-prosecution.

21. In Result, the Appeal is allowed. Order dated 22.05.2024 is set aside. Restoration Application (IBC)/11(CH)/2024 is allowed. It shall be open for both the parties to request the Adjudicating Authority to fix an early date in CP (IB) No.89/Chd/Pb/2024 for hearing the Application. No order as to costs.

**[Justice Ashok Bhushan]**
**Chairperson**

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

**NEW DELHI**

**31st May, 2024**

Ashwani