

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III**

**I.A. 745/2022
IN
C.P. No.(IB) NO. 641 OF 2020**

Under Rule 11 read with Rule 48 and 49 of
the National Company Law Tribunal Rules, 2016

Filed by

Express Machines & Scaffolding Pvt. Ltd,

...Petitioner/Operational Creditor

Vs.

M/s Timblo Drydocks Private Limited

...Respondent/Corporate Debtor

Order pronounced on: 13.09.2023

Coram:

MS. LAKSHMI GURUNG, HON'BLE MEMBER (J)

SH. CHARANJEET SINGH GULATI, HON'BLE MEMBER (T)

For the Applicant: Adv. Nausher Kohli a/w Adv. Sabdhi Shah

For the Respondent: Sr. Counsel Mr. Pradeep Sancheti a/w Adv.
Pallavi Bali & Adv. Peppino Bahl i/b Law Offices
of Divya Bahl

Per: LAKSHMI GURUNG, HON'BLE MEMBER (JUDICIAL)

ORDER

1. The above application is filed by the petitioner seeking restoration of the main Company Petition bearing CP(IB)-641(MB)/2020 and setting aside the dismissal order dated 24.03.2021 passed by this Bench.
2. The main Company Petition bearing CP(IB)-641(MB)/2020 was filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 against the Corporate Debtor for initiation of the CIRP. The captioned Company Petition was listed first time on board on 24.02.2020 and Ms. Labdhi Shah appearing for the Petitioner was present. Thereafter, owing to the pandemic situation in the country, the captioned Company Petition could not be taken up for hearing physically. The Company Petition was listed for hearing through V.C. mode on 19.02.2021.
3. Learned Counsel appearing for the Petitioner submits that the procedure which was followed by this Bench for virtual hearings was inter alia creation of WhatsApp group wherein all the advocates whose matters were listed on the concerned date were added to the group. She further submits that due to some technical glitch, she was unable to attend the hearing of 19.02.2021 and the matter was posted to 24.03.2021. She had annexed the screenshot of the WhatsApp Chat with the Court Officer as Exhibit 'B' to this Application.
4. She further submits that on 24.03.2021, the CISCO WebEx Link was not shared on the email id, which was provided by her and she was again not admitted in the lobby of hearing and that she could not attend the hearing again. Therefore, the captioned Company Petition was dismissed for non-prosecution on **24.03.2021**.
5. Thereafter, learned counsel appearing for the Petitioner filed an application for restoration of the captioned Company Petition bearing

I.A. No. 981/2021. The I.A. 981/2021 was listed on 15.07.2021 but could not be taken up for hearing due to paucity of time. Another application was filed bearing No. 1214 of 2021 for urgent hearing of IA No. 981/2021. However, it is seen from the records that these IAs were listed on 02.08.2021, 26.08.2021, 31.08.2021, 29.09.2021, 06.10.2021 and on 17.11.2021 but due to paucity of time, the matter could not be heard.

6. Thereafter, on 01.12.2021 when the matter was called for hearing the counsel missed the hearing due to her mother's medical condition who was undergoing treatment for cancer. She furnished the medical certificate of her mother's treatment at hospital, Kokilaben Dhirubhai Ambani Hospital. IA 1214/2021 was disposed of on 01.12.2021 in view of the hearing of IA No. 981/2021.
7. However, in absence of the Petitioner, this bench dismissed the I.A. 981/2021 on 01.12.2021. Hence, the present application was filed by the Petitioner on 31.12.2021 for restoration of the captioned Company Petition which was registered on 22.03.2022 and listed for the first time on 24.03.2022. The applicant submits that in case the prayer sought in the present I.A. seeking to restore the company petition is not allowed the petitioner will lose valuable right to initiate CIRP of the Corporate Debtor under Section 9 of the IBC due to fresh threshold limit of Rs. 1,00,00,000/- with effect from 24.03.2020.
8. After hearing the learned counsel appearing for the Applicant and upon perusing all the relevant documents, WhatsApp conversations, email etc. this bench is of the considered view that due to technical glitch the Petitioner could not attend the hearing on 24.03.2021 when the main company petition was dismissed. The I.A. 981/2021 was dismissed on 01.12.2021 as she could not attend the hearing due to her mother's medical conditions. Sufficient cause has been explained for absence on 01.12.2021.

9. It is seen that the present I.A. bearing I.A. 745/2022 was filed on 31.12.2021 without much delay for restoration of the company petition.
10. In the light of above facts and circumstances, this bench **allows** the above I.A. 745/2022 restoring the captioned Company Petition bearing CP(IB)-641(MB)/2020.
11. With the above direction, the above I.A. 745/2022 is **disposed of**.
12. Registry as well as Petitioner are directed to furnish the above order to the Corporate Debtor and also directed to issue notice to the Corporate Debtor clearly intimating the next date of hearing. The petitioner shall file service affidavit along with copy of notice sent to the Respondent, postal receipt, track report, email etc. at least two days before the next date of hearing.
13. Registry is also directed to make available the copy of the notice, postal receipt and track report/acknowledgement before this Bench on the next date of hearing.
14. List the main Company Petition on **29.11.2023**.

Sd/-

CHARANJEET SINGH GULATI
Member (Technical)
/RKS/

Sd/-

LAKSHMI GURUNG
Member (Judicial)