

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
KOLKATA BENCH- II**

**KOLKATA**

IA(IBC)/1561/KB/2022

IN

C.P (IB) No.680/KB/2020

***In the matter of***

*An application under 11 of the National Company Law Tribunal Rules, 2016.*

And

**In the matter of:**

**Shree Ganpati Power and Transformers**

... Financial Creditor

Versus

**South Bihar Power Distribution Company Ltd.**

... Corporate Debtor

**AND**

**In the matter of:**

**South Bihar Power Distribution Company Ltd.**

... Applicant

Date of hearing :02/02/2023

Order Pronounced on :23/03/2023

**Coram:**

***Mrs. Bidisha Banerjee, Member (Judicial)***

***Mr. Balraj Joshi, Member (Technical)***

**Counsels appeared through Physically/ Video Conference**

Mr.Jishnu Choudhury, Adv. ] For the Operational Creditor

Mr.Ratul Das,Adv. ]

Ms. S.Basu, Adv. ]

Mr. U. P. Singh, Sr. Adv. ] For the Corporate Debtor

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Mr. Kumar Manish, Adv. ]  
Mr. SNL Karn, Adv. ]  
Ms.Rajshree Venket Kundalia,Adv. ]

**ORDER**

**Per: Bidisha Banerjee, Member (Judicial)**

1. Ld. Counsel for the parties were heard.
2. This is an application preferred by the applicant to seek recalling of the orders dated 14/03/2022 and 18/05/2022.
3. On 14/03/2022, this Tribunal recorded (Corporate Debtor) in this matter has already been ordered to be proceeded *ex parte*. The order by which the matter was directed to proceed against the Corporate Debtor was passed by this Tribunal as far back as on 11/03/2020 and the order dated 14/03/2022 is a reiteration of the fact that the Corporate Debtor has been ordered to be proceeded *ex parte*, and therefore, mere recalling order dated 14/03/2022 and seeking further hearing in the matter could not come any aid of the applicant in the present IA. Further on 18/05/2022, it was recorded that the Corporate Debtor is directed to be proceeded *ex parte*. Vide order dated 18/05/2022 amendment was allowed at the behest of the Operational Creditor to amend the pleadings on the question of limitation as per the latest judicial pronouncement and not on any other facts of the case.
4. The order dt. 30/06/2022 records that the amendment as allowed was carried out in the following words:

“Ld. Counsel for the Operational Creditor submits that amendment has been carried out and the amended copy of CP was duly delivered to the Corporate Debtor and affidavit of service of petition after amendment has already been filed. The Operational Creditor is directed to file affidavit of service as per the I.T. Act format”.

5. On 13<sup>th</sup> September, 2022 order of the Tribunal records the following:-
- “ 1. *Ld. Counsel for the Operational Creditor present.*
  2. *This petition seeking Corporate Insolvency Resolution Process under Insolvency & Banking Code, 2016 was filed on 3<sup>rd</sup> February, 2020. It transpires from the record of proceeding, notice was issued to the Corporate Debtor repeatedly and Corporate Debtor was set ex-parte. Today also when the matter is fixed for final hearing, no one appears for the Corporate Debtor.*
  3. *In the interest of justice, we deem it appropriate that a notice of today’s order be served upon the Respondent through its CMD/MD for ensuring representation on the next date.*
  4. *We direct the Ld. Counsel appearing for the Operation Creditor to serve copy of this order upon the office of CMD/MD, South Bihar Power Distribution Co.Ltd. through its official email and file an affidavit of service on or before next date of hearing.*
  5. *Apart from this, Registry will also send a copy of this order and notice for appearance of CMD/MD on the next date of hearing.*
  6. *It is made clear, if there is no appearance on behalf of the Respondent on the next date of hearing, the necessary inference shall be drawn and the appropriate orders shall be passed.*
  7. *Registry is directed to furnish a copy of this order to the Ld. Counsel for the Operational Creditor.*
  8. **List this matter for consideration on 18/10/2022”.**
6. This application seeking recalling of the orders dated 14/03/2022 and 18/05/2022 have been vehemently opposed by the Ld. Counsel for the Operational Creditor. An affidavit in reply has been filed on behalf of the Operational Creditor which alleges that the application is misconceived, frivolous and filed with malafide intention of delaying the present proceeding.
7. It is alleged that the Corporate Debtor has failed to bring on record any
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document to substantiate its statement made in the said application. It is also submitted that despite service of the amended application on the Corporate Debtor by an email dated 19<sup>th</sup> October, 2022, no affidavit has been preferred, rather the Corporate Debtor has continued to seek further time to delay the proceedings and that the application suffers from gross suppression of material facts.

8. Ld. Counsel were heard at length, at hearing, it transpired as under:-
- i. The applicant South Bihar Power Distribution Co. Ltd. has claimed in the grounds mentioned for preferring this application as follows:

“That it appears that in the order dated 14.03.2022, it was recorded “Corporate Debtor in this case has already been ordered to be proceeded *ex-parte*”, however, it is matter of record that earlier no order was passed to be proceeded *ex-parte*”. The fact remains that way back on 11<sup>th</sup> March, 2020, this Tribunal had recorded the following;

“ Ld. Counsel for the Operational Creditor appears. Advance notice is served to the Corporate Debtor but none appears for the Corporate Debtor. Matter to proceed *ex parte* against the Corporate Debtor. Matter to come up next on 24.03.2020”. As such it is not entitled to any relief.

Hence the applicant in the present application is evidently guilty of suppression of material facts and has thus not come up with clean hands.
  - ii. Further, the order dated 14/03/2022 only records the fact that by way of a previous order the Corporate Debtor (CD) was already directed to be proceeded *ex parte*. The Corporate Debtor was set *ex parte* on 11/03/2020 and therefore, mere recalling the subsequent order dated 14/03/2022 would serve no useful purpose unless the parent order dated 11/03/2020 is recalled. Hence, the prayer is not tenable.

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9. Further the order dated 18<sup>th</sup> March, 2022 by which company petition was allowed to be amended, was itself an ex parte order passed having recorded the fact that the Corporate Debtor “in the main CP, the Corporate Debtor is directed to be proceeded ex parte vide order dated 14/03/2022”.
10. The matter had come up on several occasions thereafter. On 30/06/2022 none appeared for Corporate Debtor and it was recorded that “amendment has been carried out”.  
On 10/08/2022, the Ld. Counsel for the Corporate Debtor was present virtually but chose not to submit.
11. On 13<sup>th</sup> September, 2022 none appeared for Corporate Debtor, even one final hearing notice was directed upon CMD/MD South Bihar Power Distribution Company Ltd.  
It was only on 18<sup>th</sup> October, 2022, that the Ld. Counsel for the Corporate Debtor entered appearance. Since then, the matter has been appearing on 18<sup>th</sup> October, 2022, 4<sup>th</sup> November, 2022, 6<sup>th</sup> December, 2022, 3<sup>rd</sup> January, 2023 and finally on 2<sup>nd</sup> February, 2023 , when the IA No. 1561/2022 was reserved for orders.
12. In view of reasons recorded above, we find no reason to recall the orders dated 14/3/2023 as the parent order dated 11/03/2020 is not sought to be recalled and the order dated 18/05/2022, as the amendment has been permitted already and been carried out with the main CP. The IA No. 1561/2022 fails and is accordingly dismissed.
13. However, we would note that the amendment was permitted *ex parte* and long after the Corporate Debtor was set ex parte. However, to ensure fairness qua parties, in the event the amended CP needs to be dealt with by the Corporate Debtor or requires any response from the Corporate Debtor, written arguments may be furnished by the Corporate Debtor at the end of hearing of the matter, if so desired.
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14. Urgent Certified copy of this order, if applied for be issued upon compliance with all requisite formalities.

**(Balraj Joshi)**  
**Member (Technical)**

**(Bidisha Banerjee)**  
**Member (Judicial)**

Order signed on this, the 23<sup>rd</sup> day of March, 2023

PJ.