

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - I

ITEM No.301

Rest.App/10(AHM)2023 in CP(IB) 509 of 2019

Order under Section 60(5) IBC

IN THE MATTER OF:

Checkmate Securities Pvt Ltd
V/s
Singhal Sheet & Foils Pvt Ltd

.....Applicant

.....Respondent

Order delivered on 28/02/2024

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sameer Kakar, Hon,ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

-Sd-
SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-
SHAMMI KHAN
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
(COURT-I)**

**Rest.App.10 (AHM) 2023
in CP(IB) No.509 of 2019**

(Application filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016)

In the matter of:

M/s. Checkmate Services Private Limited
GF-6 to 9, Amaan Towers, Suvas Colony,
Fatehgunj Main Road,
Vadodara – 390002.

..... Applicant (Original Petitioner)

Versus

M/s. Singhal Sheets & Foils Private Limited
A-1, 20/21, Jay Ranchhod Society,
Nr. Vrinndavan Township,
Harinagar Pani Tank Road,
Vadodara – 390015.

..... Opponent (Original Respondent)

Order Pronounced On: 28.02.2024

Coram:

**MR. SHAMMI KHAN (MEMBER JUDICIAL)
MR. SAMEER KAKAR (MEMBER TECHNICAL)**

Appearance:

For the Operational Creditor: Mr. Bhavesh B. Choksi, Ld. Adv.
For the Corporate Debtor: Mr. Deepak Kotwal, Ld. Adv.

O R D E R
[Per: Bench]

1. The present application has been filed by the applicant/ Operational Creditor to recall the order dated 27.09.2023 dismissing the petition of the petitioner for default and has prayed for the following prayers:-

“(a) This Hon’ble Tribunal may be pleased to recall the order dated 27.09.2023 passed in CP(IB) No.509/2019 dismissing the matter in default, and be pleased to restore the matter to file, and oblige;

(b) Such order and further reliefs that are deemed necessary in the interest of justice may kindly be granted.”

2. It is stated that on 27.09.2023, the matter was listed at Sr. No.1 in the regular Cause List and the Ld. Advocate for the Operational Creditor was instructed to appear. Accordingly, he tried to join the online hearing of the matter on Webex platform. It is stated that from 10.25 am to 11.00 am, he was not able to login the website due to some technical issue. Hence, he could not join the online hearing. It is stated that he Learned Advocate then rushed to this Tribunal to appear in-person, physically.
3. It is stated that by the time the Learned Advocate for the Operational Creditor reached this Tribunal at

approximate 11.20 am, the board had already commenced. It is stated by the petitioner that he waited for the board to complete in order to make a mentioning request to take up his matter during the recall/ end of the board at his request.

4. It is stated that in the meantime, at approximate 12.00 noon, the Learned Advocate for the Respondent/Corporate Debtor arrived from Vadodara City in the court room. It is stated by the petitioner that while calling up of the matter, the Ld. Advocate for the Corporate Debtor was also not present when the matter got called out during the first call. Therefore, both the counsel waited for the board to get over, so that the matter may be mentioned jointly and this Bench may take up the matter for hearing.
5. It is stated by the Applicant that while sitting in the Court Hall, he was informed by the other advocates regarding his matter has been dismissed for default. Accordingly, both the parties waited the board to get over. When this Bench was rising, the Ld. Advocate for the Applicant/OC requested this Bench to take up the matter as both the Ld. Advocates/parties were physically present in the Court Hall. This Bench at that time informed the Applicant to file an I.A. for the restoration of the matter. Hence, this application.

6. It is stated that the matter was earlier listed on 08.08.2023. It is submitted by the Applicant/Operational Creditor that one day prior, i.e. on 07.08.2023, the Learned Advocate for the Operational Creditor received a Whatsapp message from the Ld. Advocate appearing on behalf of the Respondent/ Corporate Debtor that as he was ill and suffering from fever, he would not be able to attend the hearing before this Tribunal and he intends to opt for a shorter adjournment date. In support of the contentions, the applicant has annexed a copy of screenshot of Whatsapp message communication with the instant application as Annexure-A2.
7. It is submitted that the Ld. Advocate for the applicant/ Operational Creditor was under impression that the Ld. Applicant for the Corporate Debtor will take adjournment on 08.08.2023 on his personal illness ground as per the earlier communication but he did not remain present. Therefore, order dated 08.08.2023 mentions that “none appears” and the matter was adjourned to 27.09.2023.
8. On 09.02.2024, the Learned Counsel Mr. Dipak D. Kotwal appeared and filed his Vakalatnama on behalf of the Respondents as well as reply thereof. This Bench vide its order dated 09.02.2024 has recorded as:
“Today, the respondent appeared through learned counsel, Mr. Dipak D. Kotwal filed his Vakalatnama as

well as reply which is taken on record. Copy already stands supplied.”

9. The Respondent, in his reply mentioned as under:-
- (i) Firstly, the Respondent denied the maintainability of the present application.
 - (ii) It is averred by the Respondent that on 27.09.2023, when the matter was called out, due to some technical glitch, the Ld. Advocate for the Applicant could not join the Board for online hearing by stating that the Ld. Counsel for the petitioner did not sought for any alternate remedy to connect from any cybershop available in the nearby vicinity during this period. It is further contended that the Ld. Advocate was present before the Tribunal and at 10:50 am, the name of the Applicant Advocate was called out twice by this Bench. It is stated that the Applicant Advocate appeared in a rush by 12:30 pm when this Bench had already passed the order.
 - (iii) The Ld. Advocate for the respondent also contends the statements made in Para-4, Sub Para-2 that the Applicant-Advocate was not present in the Tribunal when the order was passed by this Bench. Hence, the claim of Applicant is not correct. It is submitted

that this Tribunal, when passed the order, Ld. Applicant Advocate was present.

(iv) It is further contended that the submissions in Para-4(iv) are not related to this matter. It is produced to obtain sympathy from this Tribunal.

10. We heard the Ld. Counsels from both the sides. We perused the documents and materials available on record. We also took the reply of the Respondent Advocate submitted during the hearings.

11. On perusal of proceedings, we noted that the matter was initially listed on 30.07.2019 and Ld. Advocate Mr. Bhavesh Choksi appeared for the Petitioner. After that, the matter was adjourned for multiple times for one or other reasons.

12. We also note from the proceeding orders dated 10.12.2019, 17.03.2020, 01.11.2021, 02.03.2022, 08.08.2023 that no one has appeared either online/offline mode on the mentioned dates. We also note that frequently any of the either counsel is absent in consecutive dates which further compelled to adjourn the matter.

13. On 02.03.2022, this Bench ordered for a final adjournment on 30.03.2022.

14. On 28.09.2022, this Bench directed the Respondent to upload his reply and all other documents on e-portal within a week or to precede the matter ex-parte. However, on the next date, i.e, 02.11.2022 the Respondent sought some more time to upload the pleadings. We believe that the time was sufficiently given to the party. This indicates that the parties are playing either delay tactics.
15. On 27.09.2023, this bench has noted in its proceedings as under:
*“..... It is seen that, in this matter, for the last two consecutive dates, no one has appeared for the applicant to press this application. Even today, when the matter was called out, no one has also appeared for the applicant either physically or through virtual mode to press the Application. It seems that the applicant has lost interest in this Application.
Accordingly, CP(IB) 509 of 2019 is dismissed in default.”*
16. Considering the prayer made by the Learned Counsel for applicant and in the interest of justice, we are inclined to grant one more opportunity to the Applicant by restoring the application.
17. Therefore, the present Rest. App.No.10(AHM)/2023 in CP (IB) No.509 of 2019 is hereby allowed and stands

disposed of. CP(IB) No. 509 of 2019 is restored on the file of this Tribunal and to be listed on 18.03.2024.

**-Sd-
SAMEER KAKAR
MEMBER (TECHNICAL)**

**-Sd-
SHAMMI KHAN
MEMBER (JUDICIAL)**

AT