

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH**

(Virtual Hearing)

**PRESENT: SHRI RAJEEV BHARDWAJ – MEMBER (JUDICIAL)
: SHRI SANJAY PURI – MEMBER (TECHNICAL)**

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 23.02.2024 AT 01:00 P.M.

TC/CP. Nos.	CA/IA No.	Section / Rule	Name of Parties
CP(IB)/82/7/AMR/2022	Main Case	7 of IBC	Central Bank of India Limited Vs Sri Ananda Lakshmi Narasimha Industries India Private Limited
	IA(IBC)/136/2023	Rule 49 of NCLT Rules, 2016	Chavva Naga Sampathi Tayari, Suspended Director of Sri Ananda Lakshmi Narasimha Industries India Pvt Ltd Vs. Central Bank of India & An.

ORDER

IA (IBC)/136/2023:

Ms. Aishwarya, Proxy counsel for R1 and Mr. R. Hari Prasad, Ld. Counsel for R2 present. Orders pronounced. IA (IBC)/136/2023 is dismissed and disposed of and recorded vide separate sheets.

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**SANJAY PURI
MEMBER (TECHNICAL)**

Sd/-

**RAJEEV BHARDWAJ
MEMBER (JUDICIAL)**

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH AT MANGALAGIRI**

**IA.No.136 of 2023 in
CP (IB)/82/7/AMR/2022**

**[Under Rule 49 of the NCLT Rules, 2016
Seeking Recall of the Ex-parte Order]**

**In the matter of M/s. Sri Ananda Lakshmi Narasimha
Industries India Pvt Ltd**

Ms.Chavva Naga Sampathi Tayaru,
Suspended Director of
Sri Ananda Lakshmi Narasimha Industries India Pvt Ltd,
D.No 2-184 Samisragudem, 534302, Nidadavole Mandal,
West Godavari Dist, AP.

...Applicant/ Erstwhile Director

Versus

1. Central Bank of India,
Registered office at Chandramukhi Building,
Nariman Point, Mumbai.
Also at SAM-V Branch,
By its authorised signatory,
Mr.Syed Kamal Mohinuddin,
Central Bank Building, Bank Street,
Koti, Hyderabad, Telangana – 500001.

...Respondent No.1/Applicant Financial Creditor

2. Sri Ananda Lakshmi Narasimha Industries India Pvt Ltd,
Represented by its Interim Resolution Professional,
Mr.Raghu Babu Gunturu,
930/3A, Velivenu Road,
Samisragudem Village,
Nidadavole Mandal,
Andhra Pradesh – 534302.

...Respondent No.2/Corporate Debtor rep. by the IRP

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CORAM:

Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)
Sri Sanjay Puri, Hon'ble Member (Technical)

Counsel/Parties present:

For the Applicant : Mr. Avinash Krishnan Ravi, Advocate
For the Respondent No.1 : Mr. VVSN Raju, Advocate
For the Respondent No.2 : Mr. R. Hari Prasad, Advocate

Per: Rajeev Bhardwaj, Member (Judicial)

ORDER

1. This application has been filed for recalling ex-parte order dated 20.03.2023 in CP (IB)/82/7/AMR/2022.
2. Brief facts necessary to dispose of the present application, as stated, are that:
 - 2.1 The Applicant is the Suspended Director of the Sri Ananda Lakshmi Narasimha Industries India Pvt Ltd. (hereinafter called as Corporate Debtor/CD), which went into Corporate Insolvency Resolution Process (CIRP) on 12.04.2023 in CP (IB)/82/7/AMR/2022 filed by the Central Bank of India, Financial Creditor under Section 7 of the IBC.
 - 2.2 It is averred that the Applicant was always interested in defending the said Petition, but the CD was set ex-parte vide order dated 13.03.2023.
 - 2.3 It is claimed that the Applicant is unaware of legal nuances and was not having any previous experience in dealing with litigations. He was not advised about the factum of necessity to file a counter. He only kept following up with the counsel regarding the progress of the matter.

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- 2.4 The Applicant was also asked to change the Counsel and this is also one of reasons for the advocate to return the brief.
- 2.5 In these circumstances, the Corporate Debtor was set ex-parte. In this regard, the Applicant has relied upon the decisions of the Hon'ble Apex Court in *Tahil Ram Issardas Sadarangani and Ors. versus Ramchand Issardas Sadarangani, AIR 1993 SC 1182; Malkiat Singh and ors versus Joginder Singh AIR 1998 SC 258 and The Secretary, Department of Horticulture, Chandigarh and ors versus Raghu Raj, AIR 2009 SC 514* to submit that when there is lack of communication between the counsel and the parties, this is sufficient cause to recall the ex-parte order.
- 2.6 Reliance has also been placed on the decision of the Hon'ble NCLAT in *Hacxad Infotech Private Limited versus Skootr Global Private Limited, Company Appeal (AT) (Insolvency) No.1064 of 2021 and Suspended Management of Jay Polypack Pvt. Ltd versus SGV Foils Pvt. Ltd and Ors, Company Appeal (AT) (Ins.) No. 362 of 2021* to say that the order admitting the Corporate Debtor into CIRP may be recalled for sufficient cause.
3. Respondent No.1 and 2 have filed separate reply contending and contesting the averment of the application.
- 3.1 The Respondent No.1 has submitted that the Applicant is unable to explain sufficient cause for recalling the order dated 20.03.2023 and has objection only with regard to limitation, which is totally false.
- 3.2 It is claimed that the Company Petition is filed within the limitation period in view of the judgment dated 04.04.2022 of the Debt Recovery Tribunal

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against the present Corporate Debtor and the guarantor and therefore, the limitation will run from the date of the said judgement. Besides, the Corporate Debtor has also given various OTS proposals which were concealed.

4. The Respondent No.2 instead of saying about the ex-parte order dated 13.03.2023, has made submissions regarding the hindrance created by the Applicant in the CIRP process.
5. We have heard the Learned Counsels for both the parties and have also gone through the entire records.
6. At the outset, it is to be noted that both the Respondents instead of showing malafide or insufficient grounds for dismissing the present application, have mostly pleaded facts relating to the CIRP process which are not relevant to determine the present controversy.
7. It is the impugned order dated 13.03.2023 which has been challenged by the Suspended Director of the Corporate Debtor.
8. Coming to the controversy in question, we agree with the contention of the Applicant that an ex-parte order can be set aside under Rule 49 of the NCLT Rules, 2016, which has been defined:

49. Ex-parte Hearing and disposal.

- (1) *Where on the date fixed for hearing the petition or application or on any other date to which such hearing may be adjourned, the applicant appears and the respondent does not appear when the petition or the application is called for hearing, the Tribunal may adjourn the hearing or hear and decide the petition or the application ex-parte.*

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(2) *Where a petition or an application has been heard ex-parte against a respondent or respondents, such respondent or respondents may apply to the Tribunal for an order to set it aside and if such respondent or respondents satisfies the Tribunal that the notice was not duly served, or that he or they were prevented by any sufficient cause from appearing (when the petition or the application was called) for hearing, the Tribunal may make an order setting aside the ex-parte hearing as against him or them upon such terms as it thinks fit. Provided that where the ex-parte hearing of the petition or application is of such nature that it cannot be set aside as against one respondent only, it may be set aside as against all or any of the other respondents also.*

9. Thus, it becomes clear that the ex-parte order can be reversed if it is proved that notice was not duly served or that the party was prevented by sufficient cause for his/her appearance. The case of the Applicant falls under the second clause that on the fixed date he could not appear because of sufficient cause.

10. "Sufficient Cause" is an expression which has been used in large number of Statutes. The meaning of the word "sufficient" is "adequate" or "enough", in as much as may be necessary to answer the purpose intended. Therefore, word "sufficient" embraces no more than that which provides a platitude which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case and duly examined from the view point of a reasonable standard of a cautious man. In this context, "sufficient cause" means that party had not acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or the party cannot be alleged to have been "not acting diligently" or "remaining inactive". However, the facts and circumstances of each case must afford sufficient ground to enable the Court concerned to exercise discretion for the reason that whenever the

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court exercises discretion, it has to be exercised judiciously. (See *Ramlal and Ors. versus Rewa Coalfields Ltd.* AIR 1962 SC 361; *Sarpanch, Lonand Gram panchayat versus Ramgiri Gosavi and Anr.* AIR 1968 SC 222; *Surinder Singh Sibia versus Vijay Kumar Sood* AIR 1992 SC 1540 and *Oriental Aroma Chemical Industries Limited versus Gujarat Industrial Development Corporation and Anr.* (2010) 5 SCC 459.

11. The Hon'ble Apex Court in *Parimal versus veena* AIR 2011 SC 1150 has held that sufficient cause is a question of fact and the Court has to exercise its discretion in the varied and special circumstances in the case at hand. There cannot be a strait jacket formula of universal application. In *Tea Auction Ltd. versus Grace Hill Tea Industry and another*, AIR 2007 SC 67, it was observed that the Courts have a wide discretion to set-aside an ex-parte decree on satisfying itself as regards existence of a sufficient cause.
12. In view of the aforesaid decisions, it is clear that expression "sufficient cause" should be liberally construed so as to advance justice. However, the Applicant is required to prove that it was not intentional or malafide or gross negligent act in not attending proceedings on the date fixed.
13. Service of the Corporate Debtor has not been disputed for 18.08.2023 when Mr. Anil Mukarji, Advocate has taken notice on its behalf and subsequently he took adjournment on 12.09.2022, 27.09.2022, 17.10.2022 and 28.10.2022 for filing counter. However, on the next day i.e. 21.11.2022 nobody turned up on behalf of the Corporate Debtor and therefore the right to file counter was forfeited. On 12.12.2022, the Counsel for the Corporate Debtor sought time for filing counter and he was granted as last chance.

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However, nobody appeared on behalf of the Corporate Debtor on 20.12.2022. On 14.01.2023, the Counsel for the Corporate Debtor has given no objection to the Applicant for engaging another advocate. When the Applicant did not appear on 11.01.2023, notice was directed to be issued to the Corporate Debtor. One Mr. Prakash appeared on behalf of the Corporate Debtor on 08.02.2023 and sought time to set aside order dated 21.11.2022, in pursuance of which the right to file counter was forfeited. But no such application was filed on 23.02.2023 and then the impugned order was passed on 13.03.2023 due to non-appearance on behalf of the Corporate Debtor.

14. Sequence of events which took place with effect from 18.08.2022 till passing of the impugned order on 13.03.2023 go to show that it was sheer inaction and negligence on the part of the Corporate Debtor. Many adjournments were granted for filing counter or getting the order set aside whereby opportunity to file the counter was closed and during this period the Corporate Debtor also changed its counsel once.
15. The Applicant has tried to explain its inaction by submitting that he does not know nitty-gritty of law and was not advised to file counter, but at the same took the plea that he was following the Advocates regarding the progress of the case. It implies that he was well aware about the proceedings of the case and moreover on 14.01.2023, his earlier counsel gave no objection certificate to him for engaging new counsel.
16. It is settled law that ignorance of law is no excuse, implies that the Court presumes that every party is aware of the law and hence cannot claim ignorance of the law as a defence to escape liability. The appearance of pleader is also deemed presence of the litigant.

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17. The Corporate Debtor sought many adjournments to file the counter and ultimately, this opportunity was closed vide order dated 21.11.2022 and thereafter the Counsel for the Applicant on 08.02.2023 and 23.02.2023 sought adjournment only to file appropriate application for setting aside the said order. This shows that there was gross negligence on the part of the Applicant. In *M/s.Tahil Ram Issardas Sadarangani and Ors. and M/s.Malkiat Singh and Ors.* cases supra relied upon by the Applicant, the petitioner was not having the notice of the date when the case was dismissed for non-appearance. In the case of *The Secretary, Department of Horticulture, Chandigarh and Ors. supra* also, the facts are distinct and distinguishable. In the present case, the Corporate Debtor or its Counsel has taken many dates to file counter. The Applicant has even taken no objection certificate from the previous advocate to engage new advocate. It appears that the Corporate Debtor was not intentionally appearing so that the CIRP may be delayed. The IBC is timebound process and the Applicant cannot be said to be ignorant of this. Therefore, it was more or less the fault of the Applicant in not remaining vigilant and filing counter or contesting the petition. He was having knowledge of the proceedings of the case. As such, the decision in *The Secretary, Department of Horticulture, Chandigarh and Ors. supra* is distinguishable where the Advocate was at fault.
18. The Applicant has also referred to the decision of Hon'ble NCLAT in *M/s.Hacxad Infotech Private Limited supra*, wherein also no notice was served on the Appellant. Another decision of the Hon'ble NCLAT in *Suspended Management of Jay Polypack Pvt Ltd.* case supra on the other hand supports the case of the Respondents as it was held that where

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challenge has been made to set aside ex-parte admission order, but CoC has already been constituted, the power under Rule 49(2) of the NCLT Rules, 2016 can't be exercised. In the present Company Petition (IB)/97/95/AMR/2022, the Corporate Debtor vide order dated 25.01.2023 has already been put into bankruptcy.

19. For the reasons as discussed above, we come to the conclusion that there is no sufficient cause to set aside the ex-parte order, besides the Corporate Debtor has already been put into bankruptcy and accordingly we are of the view that there is no merit in the present application. As such, this is dismissed.



(SANJAY PURI)
MEMBER (TECHNICAL)



(RAJEEV BHARDWAJ)
MEMBER (JUDICIAL)

Apoorva