



IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI

Rst. A(IBC)/3/CHE/2023

in

Rst. A(IBC)/16/CHE/2022

in

IBA/104/2020

In the matter of Marg Limited

Shriram Finance Limited

No.12, Ramasamy Street, T. Nagar,
Chennai, Rep. by its Power of Attorney Holder
Mr. A. Ramanujam

... Applicant / Petitioner

-Versus-

Marg Limited

Marg Axis
No.4/31, Rajiv Gandhi Salai,
Kottivakkam, Chennai – 600 041

... Respondent / Corporate Debtor

Order pronounced on 12th October 2023

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)

VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

For Applicant : *Uma Shankar, Advocate*
For Respondent : *B. Ramanakumar, Advocate*



ORDER

Per: VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

Rst.A.(IBC)/3(CHE)/2023 is a Restoration application filed by the Applicant / Financial Creditor seeking relief as follows;

The applicant humbly prays that this Hon'ble Tribunal may be pleased to restore the Restoration Application No.(IBC)/16(CHE) of 2022 which was dismissed for non-prosecution on 03.01.2023, and consequently grant an opportunity to proceed with the Company Petition No: IBA/104/2020, in accordance with the Provisions of the Code and pass such further or other reliefs that this Hon'ble Bench may deem fit and proper in the circumstances of the case and thus render justice

2. The Applicant Financial Creditor had filed IBA/104/2020 under Section 7 of IBC, 2016 against the Corporate Debtor viz. Marg Limited. This Tribunal vide its order dated 09.06.2022 dismissed the application for non-prosecution. The order dated 09.06.2022 is extracted hereunder;

The Petitioner is represented by the Ld. Counsel Mr. Vishnu Prasad for Mr. Uma Shankar, Advocate and the Respondent is represented by the Ld. Counsel Mr. B.Ramana Kumar through video conferencing mode.

This Application was filed on 16.12.2019 and pending on the board till date.

Ld. Counsel for the Petitioner is not ready with the case. Since the application is pending for a long time, Ld. Counsel for the Petitioner states that the settlement talks are underway.

*Hence, IBA/104/2020 is **dismissed for non-prosecution.***



3. Aggrieved by the said order passed by this Tribunal, the Financial Creditor filed Rst.A(IBC)/16/CHE/2022 before this Tribunal on 06.07.2022. The said Restoration Application was listed for hearing on 03.01.2023. Since there was no representation of the Applicant on the said date, the Rst.A(IBC)/16/CHE/2022 was again dismissed for non – prosecution on 03.01.2023.

4. Aggrieved by both the orders, i.e. order dated 09.06.2022 passed in IBA/104/2020 and order dated 03.01.2023 passed in Rst.A(IBC)/16/CHE/2022, the Applicant / Financial Creditor moved the present Restoration Application i.e. Rst.A(IBC)/3/CHE/2023.

5. It is submitted by the Learned Counsel for the Applicant / Financial Creditor that they never intended to drag the proceedings in any manner. It was the Respondent / Corporate Debtor who dragged the proceedings under the guise of settlement.

6. It is submitted that in an Application filed by ICICI Bank under Section 7 of IBC, 2016, the CIRP was initiated against the Corporate



Debtor by this Tribunal vide order dated 28.05.2019 in CP/541/IB/2019.

The Applicant herein had filed his claim before the RP, however, the Corporate Debtor filed an Appeal before Hon'ble NCLAT in Company Appeal (AT)(Ins.) No. 618/2019 and the Hon'ble NCLAT vide its order dated 30.09.2019 permitted withdrawal of the CIRP.

7. Thereafter, the Financial Creditor issued a notice dated 14.10.2019 to settle the amount. The Corporate Debtor also acknowledged^e the amount and sent a reply notice dated 22.10.2019, requesting the lender to initiate arbitration proceedings.

8. It is submitted that on 09.06.2022, the Financial Creditor submitted the status of the case before this Tribunal. It was not its intention to drag the matter. It is stated that the Applicant / Financial Creditor has a fair chance to succeed in the matter.

9. It is submitted that in relation to Rst.A(IBC)/16/CHE/2022, the Applicant received the notice from the Registry of this Tribunal dated 22.12.2022 informing that the Rst.A(IBC)/16/CHE/2022 will be listed for



hearing on 23.12.2022. However, the said case was not listed for hearing on 23.12.2022. In support of the contention, the Learned Counsel for the Applicant placed on record the notice received from the Registry of this Tribunal and also the Cause list dated 23.12.2022.

10. It is submitted that on verification from the Registry on 05.01.2023, it was found that the Rst.A(IBC)/16/CHE/2022 was already listed on 03.01.2023 and the same was dismissed for non – prosecution. It is stated that the Applicant / Financial Creditor has not received any notice from the Registry that the matter will be listed for hearing on 03.01.2023 and the said matter was listed without sending notice to the parties. It is submitted that for this reason the Applicant / Financial Creditor could not appear before this Tribunal.

11. The Respondent Corporate Debtor filed the reply. It is submitted that the Applicant / Financial Creditor has filed an appeal before Hon'ble NCLAT as against the order passed by this Tribunal dated 09.06.2022 and hence the present application deserves to be dismissed

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on the ground of *Res subjudice*. However, it is seen that the said Appeal was not numbered and listed before Hon'ble NCLAT.

12. Heard the submissions made by the Learned Counsels for the parties.

13. The reason stated by the Applicant / Financial Creditor appears to be reasonable and plausible. This Tribunal is also satisfied that there was sufficient cause for the Applicant / Financial Creditor for his non-appearance before this Tribunal on 03.01.2023. This Tribunal is of the view that IBA/104/2020 should be restored, subject to the payment of **Rs.25,000/- (Rupees Twenty Five Thousand Only)** by the Applicant to the **PM National Relief Fund** within a period of 2 weeks from today. Accordingly, IBA/104/2020 is restored back and be listed for hearing on **14.11.2023**.

14. The Registry shall forward the copy of this order to both the parties. The Applicant / Financial Creditor shall also forward this order along with notice of next date of hearing of IBA/104/2020, to the



Respondent / Corporate Debtor and file proof of service in the Registry of this Tribunal before the next date of hearing.

15. Accordingly, **Rst.A(IBC)/3/CHE/2023** stands **allowed**. List **IBA/104/2020** for hearing on **14.11.2023**

— Sd —

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

— Sd —

SANJIV JAIN
MEMBER (JUDICIAL)

Raymond