

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT- IV)**

IA/2567/ND/2022
IN
IB/259(PB)/2021

In the matter of :

Remotebullion & Jewels Pvt. Ltd. Applicant/Operational Creditor

v.

MHG Land Stocklist Pvt. Ltd. Respondent/Corporate Debtor

Order Delivered on: 10.06.2022

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SH. DHARMINDER SINGH, HON'BLE MEMBER, (JUDICIAL)

SH. RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

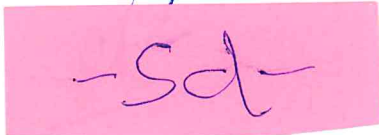
ORDER

PER: SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

The present interlocutory application has been filed by the Respondent i.e., M/s. MHG Land Stockist Private Limited ("Corporate Debtor") with a prayer to recall the orders dated 06.05.2022 & 13.05.2022 in the aforesaid Company Petition No. IB-259(PB) of 2021 filed by the abovementioned Corporate Creditor against the Respondent herein.

2. The submissions made by the respondent corporate debtor are stated in brief as follow:-

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- a. The Tribunal vide order dated 06.05.2022 in C.P.(IB) 1789/2019 had ordered the matter to be proceeded ex parte against the Respondent as none had appeared for the Respondent and therefore, listed the matter on 13.05.2022 for arguments.
- b. The respondent corporate debtor and its counsel submits that they did not realize that inadvertently vakalatnama for the captioned matter [(IB)-259 (PB)/2021] has not been filed. Since, the vakalatnama in the captioned matter was not filed, the counsel as well as the Respondent corporate debtor lost track of the matter.
- c. The respondent corporate debtor checked the status of the captioned matter and came to a realization that inadvertently the vakalatnama has not been filed. Therefore, the same was filed immediately on 11.05.2022. It was only in the evening of 12.05.2022 that the order dated 06.05.2022 was uploaded and the respondent realized that they have been proceeded ex parte.
- d. The Counsel for the respondent corporate debtor on the date fixed for final arguments on 13.05.2022 sought time to file application for setting aside the order dated 06.05.2022. Further, the counsel for the respondent corporate debtor submits that settlement talks between the parties are going on and he has no instructions to argue the matter.
- e. The respondent corporate debtor submits that apart from the captioned petition i.e., C.P.(IB)259/2021, a total of 5 other similar petitions were also filed before this Hon'ble Tribunal u/s 7 IBC against the Respondent and all the other pending five matters were settled between the parties. Further, it is submitted that the settlement talks were continuously going on between the corporate debtor and the operational creditor. Therefore, there is no reason to doubt the bona fide intention of the respondent corporate debtor.

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3. We have considered the facts of this case and the submissions made by the respondent corporate debtor. The respondent corporate debtor has filed the application (IA/2567/ND/2022) for setting aside the ex-parte order dated 06.05.2022 and 13.05.2022 on 27.05.2022 whereby the respondent corporate debtor was proceeded ex-parte vide order dated 06.05.2022 on account of consecutive non appearances on the last two hearings and further on 13.05.2022 the C.P.(IB)259/2021 was reserved for orders.
4. So far as the service of notice on the respondent corporate debtor of the captioned petition is concerned, affidavit of service dated 16.06.2021 and 28.10.2021 are placed on record evidencing that the date of hearing is duly communicated to the respondent corporate debtor.
5. So far as the ongoing settlement talks between the parties in Company Petition No. IB-259(PB)/2021, we observed that the respondent on 28.01.2022 had also submitted that the settlement talks are going on between the parties, however the petitioner stated that there is no settlement talk going on. Be that as it may, the operational creditor is at liberty to file the withdrawal application under the relevant provisions at any stage of the matter. But for that purpose, further proceedings in the matter cannot be deferred.
6. We have further observed that the order in Company Petition No. IB-259(PB)/2021 has been reserved on 13.05.2022 after providing the counsel of respondent corporate debtor an opportunity to argue the matter, whereas the counsel for corporate debtor was not ready to argue the matter. Considering the aforesaid, this tribunal is not inclined to set aside the ex-



parte order dated 06.05.2022 in exercise of power inferred under Rule 49(2) of the NCLT Rules, 2016.

7. With the aforesaid, no interference is called for setting aside the order dated 06.05.2022 & 13.05.2022 in the aforesaid Company Petition No. IB-259(PB) of 2021,
8. Thus, the Interlocutory Application IA/2567/ND/2022 is dismissed, no order as to costs.

-Sd-

(RAHUL BHATNAGAR)
MEMBER (T)

-Sd-

(DHARMINDER SINGH)
MEMBER (J)

Pronounced today under Rule 151 of the NCLT Rules, 2016 as the Hon'ble Member (Technical) Shri Rahul Bhatnagar is not holding the court today.

Court Officer