

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 527 & 528 of 2025

[Arising out of the Impugned Order dated 29.01.2025 passed by the Adjudicating Authority, National Company Law Tribunal, Mumbai Bench-III, in I.A. No. 3156 of 2023 in C.P. (IB) No. 1552 (MB) of 2017]

In the matter of:

R MALL DEVELOPERS PVT LTD.

R City Mall, 3rd Floor,
Mall Management Office, 146 CTS No. 166/1 to 23 of
Village Ghatkoper, LBS Marg, Mumbai City,
Mumbai, Maharashtra,
India, 400086
Email cs@runwal.com

...Appellant

Versus

LEMON CHILLI VEG GAURMET FOODS LLP

7, Janata Industrial Estate,
162 Senapati Bapat Marg,
Lower Mumbai, Maharashtra,
India – 400013
Email: anuj00@gmail.com

.... Respondent

Present:

For Appellant : Mr. Vishesh Kalra and Ms. Anoushka Deo, Advocates.

For Respondent : Mr. Rajiv Mehta, Advocate.

J U D G M E N T
(Hybrid Mode)

Per: Barun Mitra, Member (Technical)

The present appeal filed under Section 61 of Insolvency and Bankruptcy Code 2016 ('IBC' in short) by the Appellant arises out of the Order dated 29.01.2025 (hereinafter referred to as '**Impugned Order**') passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench, Court-III) in IA Nos. 225 and 3156 of 2023 in CP(IB) No. 1552 (MB) of 2017. By the impugned order, the Adjudicating Authority has dismissed the Restoration

Application No. 225 of 2023 as well as the delay condonation application No 3156 of 2023 thus affirming their order of 06.06.2022 dismissing the Section 9 petition filed by the Appellant-R. Mall Developers Pvt. Ltd. Aggrieved by the impugned order dismissing their Restoration Application No. 225 of 2023 as well as the delay condonation application No 3156 of 2023, the present appeal has been preferred by the Appellant.

2. Making submissions on behalf of the Appellant, the Ld. Counsel for the Appellant gave a brief factual background leading to the present Appeal. It was submitted that the Company Petition under Section 9 filed by them had been dismissed on account of non-appearance of the designated counsel before the Adjudicating Authority. It was emphatically asserted that since the Adjudicating Authority enjoyed sufficient powers to restore the dismissed Section 9 Company Petition No. 1552 of 2017, they filed a Restoration Application(**'RA'**) No. 17 of 2022. However, as this RA got dismissed for non-prosecution due to absence of the legal counsel, they filed the second Restoration Application vide No.225 of 2023. The RA No. 225 of 2023 filed for recalling the dismissal of Restoration Application No. 17 of 2022 was also dismissed on grounds of non-prosecution. Adverting attention to Rule 48 of the National Company Law Tribunal Rules, 2016 (**"NCLT Rules 2016"** in short), it was also pressed that the NCLT Rules allows for restoration of application if sufficient cause is found for non-appearance of any litigant or his counsel. It was submitted that though there were sufficient grounds for filing of the second RA but the Adjudicating Authority dismissed the second RA without allowing sufficient opportunity to defend themselves thus shutting the doors of justice in violation of the principles of

natural justice for no fault on their part. Submission was pressed that a litigant cannot be made to suffer because of non-appearance and negligence of their legal counsel representing them. In support of their contention, the Appellant has relied on the judgment of the Hon'ble Supreme Court in **Collector, Land Acquisition, Anantnag Vs Katiji AIR 1987 SC 1353** wherein it has been held that when substantial justice and technical considerations are pitted against each other, the cause of substantial justice requires to be given priority. Reliance has also been placed on the judgment of the Hon'ble Supreme Court in **Rafiq and Ors. Vs Munshilal and Ors. (1981) 2 SCC 788** in which it had been held that a party cannot be made to suffer for any inaction, deliberate omission or misdemeanour on the part of their chosen Advocate. The Adjudicating Authority in the present factual matrix too should have taken a more liberal approach so that the ends of justice would have been subserved in a more meaningful manner.

3. Refuting the contentions of the Appellant, the Learned Counsel for the Respondent submitted that the Adjudicating Authority had passed a well-reasoned order after having observed the long and protracted history of the case and the manner in which court proceedings had rolled out. It was contended that the Adjudicating Authority had rightly come to the conclusion that the Appellant has been grossly negligent in prosecuting the present proceedings and the dismissal of the second RA was eminently justified. It was asserted that a litigant owes a duty to be vigilant of their own rights specially when judicial proceedings have been initiated at their behest. On the contrary, the conduct of the Appellant was callous and negligent. In the present case, apart from shifting

the entire blame on to their erstwhile counsel, no other genuine grounds have been cited to justify the institution of the second RA. The negligence is manifested by the fact that the Appellant not only filed the second RA in a belated manner but even filed the Delay Condonation Application in respect of the second RA after a huge delay of 160 days and that too after being pointed out to do so. The Delay Condonation Application also did not lay out any sufficient or credible cause for delay. The repeated absence of the Appellant and his counsel from the court not only points out negligence and lack of bonafide intent on part of the Appellant but a calculated and strategic ploy undertaken to harass the Respondent. The Appellant has now tried to invoke Section 61 of the IBC to re-agitate the same issue of non-appearance before the Adjudicating Authority by putting the entire blame on their former legal counsel. This was not a case of isolated, inadvertent error on part of the Appellant but a conduct marked by chronic abuse of procedure, indulgence in delay tactics and wilful absence from court proceedings. The right to be heard by invoking the principles of natural justice cannot be claimed by a party who has repeatedly failed to act with diligence in prosecuting their matter before the Court. Such repeated defaults without any justifiable cause disentitles them from claiming the benefit of natural justice. Reliance was placed on the judgment of the Hon'ble Delhi High Court in the matter of ***Moddus Media Pvt. Ltd Vs M/s. Scone Exhibition Pvt. Ltd in 2017 SCC OnLine Del 8491*** to contend that it is the duty of a litigant to be vigilant about judicial proceedings pending in any court of law against him or initiated at his instance. It was contended that the litigant is expected to be vigilant and show due diligence and if negligence on the part of the litigant is

established in any manner, then the court is not to come to the rescue of such litigants. Since negligence is clearly evidenced in the facts of the present case, the Adjudicating Authority had rightly dismissed the second RA.

4. We have duly considered the arguments advanced by the Learned Counsel for the parties and perused the records carefully.

5. At the outset, we may advert our attention to Rule 48 of the National Company Law Tribunal Rules, 2016 which deals with restoration of a petition when dismissed for non-prosecution. The said Rules is reproduced hereunder:

48. Consequence of non-appearance of applicant. -

(1) Where on the date fixed for hearing of the petition or application or on any other date to which such hearing may be adjourned, the applicant does not appear when the petition or the application is called for hearing, the Tribunal may, in its discretion, either dismiss the application for default or hear and decide it on merit.

(2) Where the petition or application has been dismissed for default and the applicant files an application within thirty days from the date of dismissal and satisfies the Tribunal that there was sufficient cause for his non-appearance when the petition or the application was called for hearing, the Tribunal shall make an order restoring the same:

Provided that where the case was disposed of on merits the decision shall not be re-opened.

A plain reading of the above Rule makes it clear that the restoration application is required to be filed within 30 days from the date of dismissal order and the applicant should satisfy the Tribunal with sufficient cause explaining his absence or non-appearance which had led to dismissal of the application.

6. We now come to the findings of the Adjudicating Authority, the relevant excerpts of which are as extracted below:

“9. *We have considered the submissions on both the sides and perused the record. The conduct of the applicant is very clear that the applicant as well as its counsel had full knowledge of the section 9 petition as well as the restoration application but were not diligently prosecuting the petition and the application. When it was announced in the open court that the matter stood transferred to Court No. 3 there was no occasion for the petitioner not to be aware of the same. Thereafter even the restoration application was not diligently prosecuted and its fate was same as that of the main petition.*

10. *As far as the plea of the mistake on the part of the advocate is concerned, the leniency can be considered only in the cases where the Petitioner/applicant may be a non-commercial entity or an illiterate person or residing in a remote area and not aware of the proceedings before any court or tribunal. In the present case, we note that petitioner is a commercial entity by the name of R Mall Developers Pvt. Ltd. who are aware of the proceedings and are expected to be vigilant in prosecuting their case.*

11. *In the cases of Mitender Pal Singh Solanki vs Surender Singh And Anr (2017) SCC Online Del 12705 and Moddus Media Pvt. Ltd. vs. M/s Scone Exhibition Pvt. Ltd. (2017) SCC Online Del 8491 Hon'ble Delhi High Court has held that the litigant has to be vigilant and take part in the proceedings with due diligence and its negligence cannot be ground to rescue of such applicants. The present case is squarely covered by the above judgements. The conduct of the petitioner applicant is clearly negligent and no satisfactory cause has been explained for such negligence or even for condonation of delay in filing applications.”*

The findings of the Adjudicating Authority are that the petitioner being a commercial entity was expected to be vigilant in prosecuting their matter but from their conduct have displayed lack of due diligence in this regard. Holding that the petitioner has failed to provide satisfactory cause to justify the restoration application and the related delay condonation application, the Adjudicating proceeded to dismiss the same.

7. It is the case of the Appellant that RA No. 225 of 2023 was dismissed by the Adjudicating Authority on the wrong finding that the Appellant should have

been more vigilant in prosecuting their case though the Appellant had never slept over their rights at any stage. The Adjudicating Authority had failed to appreciate that the Company Petition No. 1552 of 2017 had been dismissed on 06.06.2022 for non-prosecution due to absence of their counsel. The Appellant immediately thereafter filed a Restoration Application No. 17 of 2022. This shows that the Appellant was diligent about protecting their cause and had filed the Restoration Application No. 17 of 2022 well on time. The first RA No. 17 of 2022 however got dismissed on 15.11.2022 due to non-appearance of the Counsel. Thereafter the Appellant had filed the second RA No. 225 of 2023 which has been wrongly dismissed by the Adjudicating Authority though facts on record show that the Appellant had always been vigilant about their rights and had taken all steps to prosecute their litigation in a diligent manner but are being made to suffer due to negligence of their counsel. It has been pressed that each time the Adjudicating Authority dismissed their petition, they had immediately filed a restoration application. The Adjudicating Authority has taken harsh stand in dismissing the second RA on the ground that the Appellant being a commercial entity was expected to act with greater diligence and cannot be seen to absolve themselves of their negligence by shifting the entire burden on the shoulder of their counsel.

8. Per contra, it is the contention of the Respondent that it is a settled position that it is the unequivocal duty of a litigant to remain vigilant with respect to asserting their rights and protecting their own cause. In the present case not only was the Company Petition No. 1552 rejected for non-prosecution but even the first RA No. 17 of 2022 had been rejected for non-prosecution and the second

RA also dismissed for non-prosecution. Even the filing of the second RA was not done within the given time framework but was done after a delay of nearly 160 days. When the Appellant had themselves instituted the main Section 9 Company Petition, they were obligated to pursue the matter in serious earnest which has not happened. A genuine litigant is not one who endeavours to cover up their own inaction by shifting the entire blame on to their counsel. It was submitted that the Appellant is trying to garner sympathy by projecting themselves as an uninformed and helpless litigant to cover up their inaction and indolence at a time when they are a commercial litigant well acquainted with court processes. Hence in the face of such manifest negligence, there is no valid ground to condone the gross inaction on their part in pursuing litigation initiated at their own behest. The Adjudicating Authority had therefore rightly dismissed the second RA as equity aids the vigilant and not the negligent.

9. To come to our analysis and findings, at this stage, it may be constructive to take note of the chronological progress of the present matter before the Adjudicating Authority. We notice that the Section 9 Company petition was filed by the Appellant on 16.10.2017. When the matter was heard on 25.02.2022, the Appellant was represented during the said hearing. By way of order of the Adjudicating Authority dated 25.02.2022, the Company petition was fixed for hearing on 20.04.2022. The Adjudicating Authority by their oral directions on 25.02.2022 had transferred the matter to Bench-III. Since the Appellant was also represented by his counsel, they were clearly aware of the transfer of the petition even though these directions had been issued orally. However, during the two

subsequent hearings on 20.04.2022 and 06.06.2022, the Appellant continued to remain absent which led to the dismissal of the Section 9 Company petition.

The two orders are as reproduced below:

20.04.2022

ORDER

Ms. Chandni Dewani, counsel appearing for the Corporate Debtor present through virtual hearing. None appeared for the petitioner.

Pleading are completed in this matter. List this matter on 06.06.2022 for appearance of the petitioner/ dismissal of the company petition.

06.06.2022

ORDER

Adv. Chandani Rewai appearing for the Corporate Debtor is present through virtual hearing. None appeared for the Operational Creditor not only today but also previous occasions.

Today, the matter is specifically listed for appearance of the petitioner/dismissal of the petition. The continuous absence of the Petitioner shows that the petitioner is no longer interested in prosecuting the matter. Hence, the above Company Petition is dismissed for non-prosecution.

It is pertinent to note that on 20.04.2022, the Appellant remained absent and the Adjudicating Authority had clearly noted that since the pleading stood completed in the matter, the matter would be heard on 06.06.2022 failing which the petition was to be dismissed. Hence, when the Appellant again did not appear on the scheduled date of hearing, the Adjudicating Authority proceeded to dismiss the Section 9 Company petition on 06.06.2022.

10. Thereafter, the Appellant filed RA No. 17 of 2022 which was fixed for hearing by the Adjudicating Authority but the Appellant again failed to appear

before the Adjudicating Authority leading to dismissal of the RA on 15.11.2022.

The relevant order is as extracted below:

15.11.2022

ORDER

R.A. 17/2022

The above application is filed by the Applicant for restoration of the main company petition which was dismissed for non-prosecution on 06.06.2022.

None appeared for the Applicant nor the physical copy of the above application is available with this Bench. It seems the Applicant is not interested in prosecuting the above application. Hence, the above Application is dismissed confirming the earlier dismissal order.

11. Consequent upon the dismissal of the first RA, the dismissal of the Section 9 Company petition stood confirmed. The dismissal of the first RA led to the Appellant filing the second RA vide No. 225 of 2023 on 13.12.2022. However, the second RA was not accompanied by a Condonation of Delay Application even though the said application was filed beyond the period of permissible 30 days under the NCLT Rules. When the delay aspect surfaced during the hearing of the second RA, the Appellant filed a Condonation of Delay Application on 22.06.2023 after a delay of nearly 160 days. Both the second RA and the Delay Condonation Application got listed on multiple occasions to eventually reach the stage of hearing on 20.10.2023. However, on 20.10.2023, the Applicant again sought for an adjournment of the matter following which the matter was listed on 14.12.2023. The matter was heard on 14.12.2023 and fixed for hearing on 22.01.2024 before passing of the impugned order on 29.01.2025 rejecting the second RA and the accompanying Delay Condonation application.

12. From the track record of above court proceedings, we have no doubts, this is a clear case of repeated non-appearance of the Appellant leading to dismissal of the main petition and the restoration applications. The Appellant cannot claim to be unaware of the legal proceedings particularly when the proceedings have been dismissed repeatedly on grounds of non-appearance of the counsel. This is not an isolated lapse on the part of their counsel but a repeated and deliberate disregard of the dates fixed for hearing by the Adjudicating Authority. The reliance placed by the Appellant on the judgment of the Hon'ble Supreme Court in ***Rafiq judgment supra*** is inapplicable as the ratio was applicable on the facts of that case. In that case, the Hon'ble Apex Court had taken a liberal view by holding that a litigant if he is a villager belonging to a rural area having no knowledge of the procedures followed by the court, the litigant cannot be made to suffer because of the default of the Advocate. We have no reason to disagree that in the present matter, the Appellant is clearly a commercial litigant and a commercial litigant unlike a hapless, common litigant cannot claim to be one who was unfamiliar with the process of the litigation or that he was a stranger to the ongoing court proceedings.

13. The invocation of NCLT Rule 48(2) can be allowed only in bonafide cases where a party has demonstrated genuine reasons or sufficient cause for absence and where the litigant has acted with promptness and good faith in seeking restoration. The Appellant cannot claim unfettered right of restoration without adequate reasons. In the present case, apart from shifting the entire blame on the erstwhile counsel, no other genuine grounds have been cited to justify their slackness in pursuing the ongoing court proceedings leading up to the

institution of the second RA. Neither has sufficient or credible cause put on record to explain why the second RA was filed with delay. The Appellant not only belatedly the filing of the second RA but also belatedly file the Condonation of Delay Application. Further, even when the second RA came up for hearing they failed to appear when it was listed for hearing. The litigant cannot be permitted to shift the entire blame on to their counsel. No material has been placed on record to show that any corrective action had been taken by the Appellant to ensure appearance by the counsel or to substitute the counsel for his errant behaviour. We are inclined to agree with the Adjudicating Authority that a commercial litigant who has voluntarily approached the Adjudicating Authority to institute a Section 9 proceeding is expected to monitor the progress of their own case with due diligence which is found to be amiss. There is a consistent pattern of default which reflects a complete lack of seriousness or bonafide intent on the part of the Appellant. This is a case of sustained and deliberate pattern of non-appearance on the part of the Appellant. The process of law cannot be allowed to become a tool of delay and abuse at the hands of such unscrupulous litigants. We do not find the dismissal of the restoration application to have been done on grounds of procedural technicalities but due to repeated lapse on the part of the Appellant to be present before the court inspite of several opportunities having been given to be present. We agree with the Adjudicating Authority that the Appellant cannot be allowed to create a smoke-screen out of the absence of counsel to circumvent the consequences of their own impromptitude and lack of diligence in pursuing their interests before the court diligently. In the face of such negligence, inaction and lack of bonafide on the

part of the Appellant, we are of the considered view that no adequate or sufficient cause has been furnished before the Adjudicating Authority to justify the second RA.

14. We therefore do not find any merit in the Appeal. The Appeal stands dismissed. No costs.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

Place: New Delhi

Date: 25.09.2025

Abdul/Harleen