

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 1326 of 2025

IN THE MATTER OF:

Brown Bird Enterprises Pvt. Ltd.

...Appellant

Versus

Sundaram Finance Ltd. & Ors.

...Respondents

Present:

For Appellant : Mr. Vivek Sarin, Mr. Dhruv Dev Gupta, Mr. Satish C. Kaushik, Adv.

For Respondents : Mr. Toshif Ahmed & Mr. Hashmat Nabi, for R-4

O R D E R
(Hybrid Mode)

[Per : Mohammad Faiz Alam Khan (Oral)]

10.04.2026 Heard Learned Counsel for the Appellant as well as Learned Counsel for the Respondent No. 4.

2. Compliance affidavit dated 01.12.2025 has been filed by the Appellant in pursuance of the order dated 04.11.2025 with the contention that the Appellant was permitted to accept service on the Respondents by publication in seven newspapers and in compliance of the said directions of this Appellate Tribunal, the notice was published in newspapers of English as well as in vernacular languages.

3. It is also stated that the newspaper wherein the notice was published were having wide circulation in Delhi, Maharashtra, Karnataka, West Bengal, Tamil Nadu, Gujarat and Uttar Pradesh, where the Respondents are ordinarily residing or having their head office. Copy of the aforesaid newspapers is also enclosed with the affidavit.

4. Keeping in view that the affidavit of service has been filed by the Appellant and from the averments made therein along with the copy of the aforesaid newspapers, it appears that the substituted service on the Respondents have sufficiently been done well before 01.12.2025. Thus, we hold that the service on Respondent is sufficient. However, except Respondent No. 4, no respondent is represented.

5. Learned Counsel for the Appellant as well as Learned Counsel for the Respondent No. 4 are ready to argue the matter. Heard Learned Counsel for the Appellant as well as Learned Counsel for the Respondent No. 4.

6. The instant appeal has been filed by the Appellant against the impugned order dated 09.06.2025 Restoration application/47/ND/2025 in IB/258/ND/2024 with the following prayers:-

- a) Setting aside Impugned order dated 09.06.2025 in Restoration Application No. 47 of 2025 in Company Petition (IB) No. 258 of 2024 passed by the National Law Company Tribunal, New Delhi Bench; and/or
- b) Restore the Company Petition (IB) No. 258 of 2024 to its original position; and/or
- c) Pass any other order or orders as this Hon'ble Appellate Tribunal may deem fit and proper in the facts and circumstances of the present case.

7. Learned Counsel for the Appellant submits that he has filed an application under Section 10 of the Insolvency & Bankruptcy Code, 2016

(**Code**) before the Learned Adjudicating Authority and the same was pending for adjudication. However, on 16.05.2025 the Learned Counsel for the Appellant was before the Hon'ble Supreme Court in connection with Special Leave Petition (Civil) Diary No. 17900/ 2025, Deputy Director, Directorate General of GST Intelligence, DZU & Ors. vs. Kings Security Guard Services Private Limited and for this reason, he could not appear before the Learned Adjudicating Authority and vide order dated 16.05.2025 the petition of the Appellant was dismissed for non-prosecution.

8. It is further submitted that the Appellant has moved a Restoration Application before the Learned Adjudicating Authority contending specifically that on 16.05.2025 the Learned Counsel for the Appellant, namely, Mr. Dhruv Dev Gupta was before the Hon'ble Supreme Court and for that reason he could not appear before the Learned Adjudicating Authority but Learned Adjudicating Authority has dismissed the restoration application moved by the Appellant by passing an order dated 09.06.2025 without considering the ground put forth by the Appellant in his application.

9. It is vehemently submitted that the Applicant/ Appellant was contesting his case before the Learned Adjudicating Authority bonafidely and it was only on 10.03.2025 that due to ill health of Learned Counsel for the Appellant he could not appear before the Learned Adjudicating Authority and before 10.03.2025 Learned Counsel for the Appellant was regularly appearing before the Learned Adjudicating Authority.

10. It is vehemently submitted that a party should not be penalised for any act of his counsel and since a reasonable explanation of the absence of Learned Counsel for the Appellant was placed before the Learned Adjudicating Authority alongwith the order of the Hon'ble Supreme Court passed in Special Leave Petition (Civil) Diary No. 17900/ 2025 wherein the presence of the Learned Counsel for the Appellant is noted, the restoration application of the Appellant should have been allowed.

11. It is submitted that the Appellant intends to contest the 'lis' bonafidely and is making a statement that if an opportunity be given to contest the case, no adjournment shall be taken on his behalf and therefore the impugned order be set a side and Restoration Application moved by the Appellant be allowed.

12. Learned Counsel for the Respondent No. 4 however, submits that he is not having objection so far as the prayer of the Appellant with regard to the acceptance of his restoration application is concerned.

13. We have heard Learned Counsel for the Party and have perused the record and find that it was on 10.03.2025 and 16.05.2025, Learned Counsel for the Appellant did not remain present before the Learned Adjudicating Authority and for this reason the petition filed by the Appellant was dismissed by the Learned Adjudicating Authority by passing the impugned order dated 09.06.2025.

14. We also notice that the reason for non presence before the Learned Adjudicating Authority has been taken by the Appellant in terms that their

counsel, namely, Mr. Dhruv Dev Gupta, Advocate on that day was present before the Hon'ble Supreme Court in Special Leave Petition (Civil) Diary No. 17900/ 2025 which according to Learned Counsel for the Appellant was listed before the Court No. 3 as item No. 23.

15. Learned Counsel for the Appellant has also drawn our attention towards the copy of the order of the Hon'ble Supreme Court of date 16.05.2025 passed in Special Leave Petition (Civil) Diary No. 17900/ 2025 wherein the name of Mr. Dhruv Dev Gupta is reflected as Learned Counsel for Respondents.

16. Even though the duty was of the Learned Counsel for the Applicant appearing before the Learned Adjudicating Authority to move an appropriate application for the adjournment of the petition on account of his presence before the Hon'ble Supreme Court, but it is reflected that it was only on two occasions when Learned Counsel for the Appellant was not present before the Learned Adjudicating Authority once on 10.03.2025, due to ill health of Learned Counsel for the Appellant and secondly on 15.06.2025 and the reason of his non appearance before the Learned Adjudicating Authority on the date when the impugned order has been passed i.e., 09.06.2025 appears to be sufficient and genuine as he was present before the Hon'ble Supreme Court in the aforestated case.

17. In view of above, we are of the considered opinion that sufficient explanation has been given by the Appellant on non presence of their Advocate before the Adjudicating Authority on 09.06.2025 an opportunity

may be provided to the Appellant to contest his case before the Learned Adjudicating Authority diligently.

18. Thus, keeping in view of the facts and circumstances of the case and for the reasons mentioned herein before, we are of the considered view that the impugned order dated 09.06.2025 is liable to be set aside and is set aside as such. The appeal is thus allowed. The Restoration application/47/ND/2025 in IB/258/ND/2024 dismissed vide order dated 09.06.2025 is revived on the board of the Learned Adjudicating Authority with the direction that the same will now be disposed of afresh after providing an opportunity of being heard to the parties strictly in accordance with law and keeping in view the defence which has been taken by the Appellant of his non presence before the Learned Adjudicating Authority on 16.05.2025.

19. We clarified that we have not expressed any opinion in so far as the merits of the case is concerned. Parties shall appear before the Learned Adjudicating Authority on **22.04.2026**. There is no order to costs. I.A., if any, is also disposed of.

[Justice Mohammad Faiz Alam Khan]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

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