

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI
MA No.48/2016 IN C.P. NO. 04 /I&BP/NCLT/MB/MAH/2017**

**Coram: B.S.V. Prakash Kumar, Member (Judicial) &
V. Nallasenapathy, Member (Technical)**

**In the matter of under Section 9 of Insolvency and Bankruptcy Code, 2016
and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating
Authority), Rules 2016**

And

J.J. PLASTALLOY PVT. LTD. Applicant.

v/s.

MILTECH INDUSTRIES PVT. LTD. ... Respondent

Applicants' Counsel: Mr. Ashutosh Kamat a/w Mr. Prasad Shenoy,
Advocates for the Applicant.

ORDER

(Heard & Pronounced on 14.03.2017)

The Petitioner filed this MA 48/2016 for recalling the order of dismissal for default passed by this Bench on 19.1.2017 in CP 4/2017 filed u/s.9 of I&B Code and for restoration of the same.

2. The petitioner having filed this CP u/s.9 of I&B Code on 12.1.2017, it came up for hearing on 18.1.2017, on the said date, when none present from the petitioner side, this Bench passed an order stating that "none present on behalf of Applicant", accordingly listed this matter for hearing on the next day 19.1.2017 with a direction that in the event the Applicant remained absent on the next day, CP would be dismissed for default. When the matter came up for hearing on the following day, again the Petitioner remained absent whereby this Bench dismissed the Petition for default on 19.1.2017.

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3. Since this Petition was dismissed for default on 19.1.2017, now this Petitioner has filed this Recall and Restoration Application on 24.2.2017 stating that at the time of filing Company Petition the Court Clerk orally informed the concerned Advocate Clerk that date of hearing would be informed as soon as posted for hearing. The Applicant/petitioner further states that when the said Clerk made inquiries about the status of the above Company Petition, the Court Clerk used to repeat the same saying it would be informed to him.
4. The Applicant says that the Advocate appearing on behalf of the Applicant was shocked by seeing the letter dated 8.2.2017 from this Tribunal and the order dated 19.1.2017 dismissing the Company Petition on 19.1.2017.
5. The Applicant submits that the Advocate Clerk was diligently following up with this Tribunal right from filing of the Company Petition recalling the status of the above Company Petition. The Applicant has gone ahead saying that this Tribunal clerk orally informed the Advocate Clerk that a notice would be issued to the Advocate in respect of scheduled date of hearing again, but on seeing an order dated 19.1.2017, the Advocate of the Applicant was shocked and surprised to see the matter being listed on 18.1.2017 and 19.1.2017 without the applicant being put to notice of hearing. This Applicant says that the Advocate had no reasonable belief whatsoever that the above Company petition would be listed for hearing prior to being informed to the advocate on record. The Advocate for the Applicant could not get any reasonable opportunity whatsoever to appear before this Bench when the Company petition was listed on 18.1.2017 and 19.1.2017. Since the orders dated 18.1.2017 and 19.1.2017 had been passed without prior information either to the Applicant or the Advocate, the Applicant filed this Application for recalling and restoring the Company Petition.
6. Today, the Counsel appearing on behalf of the Petitioner submits that this Company petition may be restored by invoking Rule 48(2) of NCLT Rules on the ground that the procedural aspects in relation to I&B proceedings have to be

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considered in accordance with NCLT Rules in view of the amendment taken out to section 424 of the Companies Act, 2013. The Applicant/Petitioner Counsel submits that since procedure before the Tribunal and the Appellate Tribunal being governed by Sec.424 and Rules prescribed thereto, dismissal of this CP has to be construed as dismissal u/r 48(1) of NCLT Rules and when this dismissal falls u/r 48(1) of the NCLT Rules, then it has to be construed that this Application filed for Restoration of the IB petition will obviously be governed by Rule 48(2) devised for Restoration of the petition dismissed for default.

7. The Applicant Counsel further submits that procedural law is always supplemental to substantive law, thereby if at all any Application is dismissed for default and when sufficient cause has been shown for restoration, then it shall be restored if it is filed within 30 days from the date of the dismissal order, since the present application has been filed within 30 days, it shall be restored on there being a sufficient cause for the absence of the counsel on the date of hearing.

8. As to the pleadings and arguments of the Counsel saying that the Advocate Clerk had been put to impression that the Advocate would be informed about listing of the matter by the Registry of NCLT, we do not find any merit in such argument because daily cause list is uploaded on daily basis one day before the date of hearing, accordingly this matter was also uploaded on 18.1.2017, as the applicant/applicant counsel remained absent, the matter was posted to the following day by uploading next day cause on the same day. Since the cause list being timely uploaded on the web site of NCLT, the advocates filing cases ought to visit website as to whether matter has been posted for hearing or not, that has admittedly not happened. On the next day also, neither the petitioner nor its Counsel present. Therefore, this arguments saying that the Clerk making inquiries and the Registry of NCLT Mumbai not sending communication to the applicant or its counsel will not be relevant or sufficient cause to the counsel failed to appear for the hearing.

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9. Ever since, Insolvency and Bankruptcy Code has been notified, this Bench has been taking up the matters and passing orders as and when the matter has come up before this Bench unless and until parties seek adjournment either on the ground of short of compliance or for making further submissions in relation to this case. That adjournment is also hardly for one or two days because this Code mandates this Bench to pass orders under sections 7,9 and 10 of the Code within 14 days from the date of filing of filing the Petition.

10. This Bench also makes it clear that when matter showing up in the cause list reflecting on the Website of NCLT, it has to be considered as a judicial notice to the parties to appear before this Bench on the date the matter is listed, here, for the sake of convenience of the Applicant, though the party remained absent on 18.1.2017, this Bench posted this matter to the following day hoping that the Applicant would appear on the following day, but on the following day also, the Applicant Counsel remained absent. It is understandable if a case is heard and passed orders against Respondent side in his absence without notice, then the Respondent could come complaining order has been passed against him behind the back of him, because there would not be any occasion to presume that a case would be heard against Respondent without being informed of, here no such presumption could be raised in favor of the applicant, because the applicant being the person filed case, he/she/it has to remain diligent to pursue when would his case be posted for hearing.

11. If this Bench restores this Company Petition basing on Rule 48 (2) of NCLT Rules, then it will be in violation of the time lines given under I&B Code. This Court makes it clear that order has to be passed within 14 days from the date of filing of CP either under Sec.7 or Sec.9 or Sec.10 of I&B Code, if today this petition filed on 12.1.2017 is restored, it would be undoubtedly beyond 14 days of the life given in the statute. In view of this predicament, this Bench is doubtful as to whether Rule 48(2) is to apply for restoring the CP dismissed for default. If it is restored, it will become repugnant to the time period given under the Code. If it is not restored, then it will be non-application of the restoration power given to this Bench under

Rule 48(2) of NCLT Rules. Since the former action i.e. restoration of this Company Petition being repugnant to the Code itself, this bench is of the view that the procedure always being subservient to the substantive law, as quoted by the Applicant Counsel, this Bench has to go by the Sections of Law rather than the procedural Rules mentioned under Rule 48(2) of NCLT Rules.

12. Once Company Petition is filed under any of the provisions namely Sections 7 to 10 of the I&B Code, the parties and the Advocates appearing on behalf of the parties must be diligent to appear on the dates given and it is not possible for any Court to inform the parties about the date of hearings. Since Cause-List has been timely uploaded, it is the duty of the parties filing cases to find out as to whether their matters are listed in the cause list or not.

13. This Bench, notwithstanding the cause shown in the Application for Restoration, holds that restoration of a petition dismissed for default is against the letter and spirit of the Code, hence this application is hereby dismissed. The Petitioner is always at liberty to opt for other remedies available in accordance with the law.

14. The Petitioner Counsel relied upon the **Raj Kishore Pandey v. State of Uttar Pradesh & Others (2009) 2 SCC 692** to say that Court shall not decline to grant the relief sought in Restoration Application when petition is dismissed for default on the ground that reasons stated in Affidavit accompanied to Restoration Application, because restoring the petition dismissed for default has to be exercised on sound principles and not on mere technicalities.

15. On perusal of the citation supra, it is a restoration application filed in a Writ Petition, should I & B Petition dismissed for default be restored when law says I & B petition should be heard and pass orders within 14 days by admitting or dismissing it. I & B petition shall be brought to logical end in 14 days, unless and until it is extended by this Bench for the reasons mentioned therein. Once the proceeding is initiated under any of the three Sections of the Code mentioned

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above, it has to be completed within 14 days, since the life to the Petition u/s 7, 9 &10 remains for 14 days from the date of filing, this Bench cannot bring forth life to the said petition by restoration when its life itself is designed for fourteen days. If fresh life is given to it in the name of restoration after those 14 days, it will be in violation of the lifetime of 14 days given u/s.7(4), 9(5) & 10(4) of the Code.

16. In view of the reasons mentioned above, this Application is hereby dismissed.

Sd/-

B. S.V. PRAKASHKUMAR

Member (Judicial)

Sd/-

V. NALLASENAPATHY

Member (Technical)