

**THE NATIONAL COMPANY LAW TRIBUNAL  
CHANDIGARH BENCH, CHANDIGARH  
(Exercising powers of Adjudicating Authority under  
the Insolvency and Bankruptcy Code, 2016)**

**IA No. 35/2023 & 36/2023  
In  
CP (IB) No.458/Chd/Hry/2019  
(admitted)**

**In the matter of:**

Raj Kumar, Proprietor of Jai Jyoti Woolen Mills  
....Petitioner/Operational Creditor  
Vs.

M/s. Sant Lal and Sons Exports Pvt. Ltd. ...respondent/Corporate debtor

**And in the matter of IA No. 35/2023 & 36/2023**

Raj Kumar  
Proprietor of Jai Jyoti Woolen Mills  
having its registered address at  
Industrial Area, Panipat-132103, Haryana

...Applicant

Vs.

**1. M/s Shri Sant Lal and Sons Exports Pvt. Ltd.**

having its registered address at  
322/19, First Floor,  
Bhatia Colony Panipat,  
132103, Haryana

...Respondent No. 1

**2. Shri Dinesh Kumar**

Insolvency Resolution Professional  
having its registered address at  
Room No. 7, First Floor,  
Chatarbhuji Lellawati Trust Building,

IA No. 35/2023 & 36/2023  
In  
CP (IB) No.458/Chd/Hry/2019  
(admitted)

Geeta Mandir Road,  
Panipat-132103, Haryana

...Respondent No. 2

**Order delivered on: 20.07.2023**

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)  
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

**Present :**

For the applicant in  
IA No. 35/2023 & 36/2023 :Ms. Anmol Gupta, Advocate

For respondent in  
IA Nos. 35/2023 & 36/2023.  
: Mr. Vishal Malhotra, Practising Chartered  
Accountant

**Per: Subrata Kumar Dash, Member (Technical)**

**ORDER**

**IA No. 36/2023**

The application has been filed by the corporate debtor under Section 49(2) of the NCLT Rules, 2016 for setting aside the ex-parte order dated 07.12.2022 and initiation of CIRP against the corporate debtor.

2. The following facts have been stated by the applicant:-

- a) The applicant engaged a legal counsel for handling the matter but the said counsel neither appeared nor informed the applicant regarding the date on which this adjudicating authority was supposed to hear arguments. Also,

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the counsel failed to inform the applicant about the last opportunity granted to the applicant by this adjudicating authority.

b) The applicant claims that his right and opportunity to explain the true facts and circumstances of the case cannot be deprived at the sole negligence of the counsel. The correct position of facts and circumstances has to be duly presented before this adjudicating authority for effective and right this adjudication in the present matter. Moreover, the applicant states that it would be detrimental for the applicant and irreparable loss would be caused to the applicant, and the applicant should not suffer CIRP due to the negligence of the counsel.

c) The applicant states that it is a solvent company running its business with the aim to earn better profits, and the operational creditor had filed a case as a substitute for recovery of the purported debts. Hence, the case was filed on false and frivolous grounds.

d) It has been stated that from 09.11.2022 to 13.11.2022, the mother of the suspended director went through surgery at Panipat, due to which the suspended director was not in a position to take up any matter other than the health of his mother. The medical records have been attached as Annexure A-2 of the application.

e) The non-appearance of the applicant was neither deliberate nor intentional, and the applicant claims a chance to put his case before this adjudicating authority in the interest of justice.

3. The reply has been filed by respondent No. 2-IRP (now replaced by Resolution Professional) and has stated the following:-

a) The CIRP proceedings in the aforementioned matter have already commenced w.e.f. 07.12.2022 and the applicant-suspended director Sh. Deepak Chhabra has wrongfully filed the present application in his capacity being the director of the corporate debtor, who is now suspended during the CIRP.

b) The respondent RP seeks to intervene in the present application as the CIRP process has already been completed, and the respondent RP has already filed an application for the liquidation of the corporate debtor in IA No. 1264 of 2023, and huge cost has been incurred towards the CIRP by the stakeholders of the corporate debtor.

c) The respondent points out that the applicant-corporate debtor had duly filed its reply, and a number of opportunities were given to the applicant-corporate debtor to address arguments in the insolvency petition and the counsel for the applicant. The corporate debtor was duly present before this adjudicating authority as noted in an order dated 25.07.2022, attached as Annexure R-1 of the reply.

d) The written submissions were filed by the petitioner-operational creditor in the insolvency petition on 28.09.2022, but the applicant-corporate debtor intentionally and deliberately did not appear before this adjudicating authority and failed to file its short written submissions. This adjudicating authority in its order dated 28.09.2022, clearly stated that if no representation on behalf of the

corporate debtor is made, then ex-parte arguments will be heard on the following date of hearing, i.e. 15.11.2022. (Order dated 28.09.2022 is attached as Annexure R-2 of the reply)

e) That on the subsequent date of hearing, i.e. 15.11.2022, the corporate debtor again did not appear before this adjudicating authority and ex parte arguments were heard, and the orders were reserved. (Annexure R-3 of the reply)

f) The applicant corporate debtor, after passing the admission order dated 07.12.2022, approached this adjudicating authority for setting aside ex-parte order to derail the CIRP proceedings.

g) The respondent mentioned that “sufficient cause” has to be seen by setting aside an ex-parte order, and the pleas taken by the applicant-corporate debtor have not been supported by any substantial evidence.

4. We have heard the learned counsel for the parties and have carefully perused the records available.
5. It is seen from the records that Mr. Karan Dev Ray, Advocate, appeared on behalf of the present applicant on 25.07.2022 in the proceedings in CP(IB) No. 458/Chd/Hry/2019, initiated by Sh. Raj Kumar, the petitioner-operational creditor. Subsequently, there was no appearance on 15.11.2022, and it was made clear in our order dated 28.09.2022 that if there was no representation on behalf of the respondent-corporate debtor, then ex-parte arguments would be heard on the next day of the hearing. On the next date of hearing, i.e., on

15.11.2022 and the order was reserved. The same was pronounced on 07.12.2022.

6. The ratios of the decisions relied on by the applicant, along with the citation of the same are listed below:
  - I. The Supreme Court passed an order in the matter of “**G.P. Srivastava vs. R.K Raizada and Ors.**” dated 03.03.2000, wherein it is held that the appellant has to establish “*sufficient cause for his non-appearance on the date fixed when ex-parte proceedings were initiated against him*”.
  - II. The NCLAT has passed an order in the matter of “**M/s. Mahadev Trading Company vs. M/s. Supreet Chemical Private Limited**”, Company Appeal (AT) (Ins.) No. 149/2022, which deals with the necessity of cogent evidence to prove the supply of goods to the respondent in an application filed under Section 9 of the IBC.
  - III. The co-ordinate NCLT Bench of Kolkata has passed an order in the matter of “**Sanjay Stores vs. Cookme (Spice) Private Limited**” CA(IB) No. 987/987/KB/2018 dated 07.12.2018 for setting aside the ex-parte order in which the Advocate failed to appear before the Adjudicating Authority resulting in the initiation of CIRP.
  - IV. The Hon'ble Punjab and Haryana has passed an order in the matter of “**Krishan vs. Santraj and Ors.**”, CR-4236-2019 (O&M) dated 07.04.2022 holds that the setting aside an ex-parte judgment and decree on the ground that an adverse order has been passed because of the

absence of the lawyer and the defendant-petitioner should not suffer for that.

- V. The Hon'ble Punjab and Haryana has passed an order in the matter of "**Harjinder Singh vs. Kirpal Singh.**" Civil Revision No. 5683 of 1999 dated 25.01.2000 holds that setting aside the judgment and decree of the Trial Court on the ground that the litigants should not suffer for the negligence of the lawyer.
- VI. The Hon'ble Punjab and Haryana has passed an order in the matter of "**Paramjit Singh vs Faquir Singh**", C.R. No. 2247 of 1999 dated 09.09.1999 holds that setting aside a judicial order on the ground that the petitioner had engaged a lawyer and filed written submissions which was already before the Trial Court and the same should have been considered and there was no necessity for passing an ex-parte decree.
- VII. The Hon'ble Punjab and Haryana has passed an order in the matter of "**Paramjit Singh vs Faquir Singh**", C.R. No. 2247 of 1999 dated 09.09.1999 holds that the setting aside a judicial order on the ground that the petitioner had engaged a lawyer and filed written submissions which was already before the Trial Court and the same should have been considered and there was no necessity for passing an ex-parte decree.
- VIII. The Hon'ble Punjab and Haryana has passed an order in the matter of "**Navneet Priya Shamji Maharaj vs Chuni Lal Sharma and Ors**", R.S. No. 2546 of 1999 dated 04.10.1999 holds that the bona fide of the

defendant was proved by the engagement of a counsel who filed written submissions and the litigant should not suffer for a fault of a lawyer.

- IX. The NCLAT has passed an order in the matter of **“M/s. Hacxad Infotech Private Limited vs. M/s. Skootr Global Private Limited”** Company Appeal (AT) (Insolvency) No. 1064 of 2021 dated 10.03.2022, wherein it was held that before the constitution of COC if Adjudicating Authority is satisfied that notice was not duly served on the corporate debtor, the Adjudicating Authority can make an order for setting aside ex-parte order.
- X. The NCLAT has passed an order in the matter of **“AKJ Fincap Limited vs Bank of India”**, Company Appeal (AT) (Insolvency) Nos. 178 and 179 of 2021, dated 16.04.2021, wherein it is held that the Adjudicating Authority has the power to set aside the ex-parte order provided it is satisfied then there was sufficient cause with respect to service of notice as provided in Rule 49(2) of NCLT Rules, 2016.
- XI. The NCLAT has passed an order in the matter of **“Yogesh Mehra, Partner of Vaayu Infrastructure LLP vs. Vaayu Infrastructure LLP”**, Company Appeal (AT) (Insolvency) Nos. 1069-1070 of 2019 dated 11.02.2022, wherein it is held that the setting aside of order after holding that the Adjudicating Authority has not considered the provision of Rule 37, 49 and 150 of the NCLT Rules.
7. After going through the aforementioned judicial decisions relied upon by the applicant, we note that mostly these judicial decisions are in the context of proceedings in Civil Courts, which are not subject to the strict timelines laid

down under the Insolvency and Bankruptcy Code, 2016. As narrated in the abovementioned paragraphs, sufficient opportunity was given to the applicant to represent his case before passing the ex-parte order, the applicant also had an opportunity to prefer an appeal against the order of this Bench before the Hon'ble NCLAT. However, the same has not been done; if the applicants are allowed to take such pleas after the order of initiation of CIRP is passed under the provisions of the Insolvency and Bankruptcy Code, 2016, the process will become endless and will have a very adverse effect on the resolution of the corporate debtor.

8. In view of the same, the prayer of the applicant is not acceded to, and IA No. 36/2023 is dismissed and disposed of accordingly.

**IA No. 35/2023**

9. IA 35/2023 was filed with a prayer for interim injunction order in favour of the application IA No. 36/2023 to stay the operations of the impugned order initiating CIRP dated 07.12.2022. Since IA 36/2023 is dismissed as above, consequently, IA 35/2023 becomes infructuous and disposed of accordingly.

Sd/-

**(Subrata Kumar Dash)**  
**Member (Technical)**

July 20, 2023  
PB/JGS

Sd/-

**(Harnam Singh Thakur)**  
**Member (Judicial)**

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