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**BEFORE THE ADJUDICATING AUTHORITY  
(NATIONAL COMPANY LAW TRIBUNAL)  
AHMEDABAD BENCH  
AHMEDABAD**


**IA 415 /2019 in IA 414/2019 in IA 176/2019 in  
C.P. (I.B) No. 473/NCLT/AHM/2018**

Coram: **Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH  
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 06.08.2019**

Name of the Company: SVM Cera Pvt. Ltd.  
V/s.  
Gangotri Glazed Tiles Pvt. Ltd.

Section of the Companies Act: IA for Condonation of Delay

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	Musesh. Anyas	Advocate	Petitioner	
2.				

**ORDER**

The Applicant is represented through learned counsel.

The Order is pronounced in the open court, vide separate sheet.

  
**MANORAMA KUMARI  
MEMBER JUDICIAL**

Dated this the 06th day of August, 2019

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**BEFORE THE ADJUDICATING AUTHORITY  
(NATIONAL COMPANY LAW TRIBUNAL)  
AHMEDABAD BENCH  
AHMEDABAD**


**IA 414/2019 in IA 176/2019 in  
C.P. (I.B) No. 473/NCLT/AHM/2018**

Coram: **Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH  
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 06.08.2019**

Name of the Company: SVM Cera Pvt. Ltd.  
V/s.  
Gangotri Glazed Tiles Pvt. Ltd.

Section of the Companies Act: IA for Restoration

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	Mrugesli. A. Vyas	Advocate.	Petitioner	
2.				

**ORDER**

The Applicant is represented through learned counsel.

The Order is pronounced in the open court, vide separate sheet.

  
**MANORAMA KUMARI  
MEMBER JUDICIAL**

Dated this the 06th day of August, 2019

**BEFORE THE ADJUDICATING AUTHORITY  
(NATIONAL COMPANY LAW TRIBUNAL)  
AHMEDABAD BENCH  
AHMEDABAD**

**I.A. No. 414 of 2019  
with  
IA No. 415 of 2019  
in  
I.A. No. 176 of 2019  
in  
CP(IB) No. 473 of 2018**

**In the matter of:**

**IA 414/2019**

SVM Cera Pvt. Ltd.

...Applicant

**Versus**

Gangotri Glazed Tiles Pvt. Ltd.,

...Respondent

**with**

**IA 415/2019**

SVM Cera Pvt. Ltd.

...Applicant

**Versus**

Gangotri Glazed Tiles Pvt. Ltd.,

...Respondent

**in**

**IA 176/2019**

SVM Cera Pvt. Ltd.

...Applicant

**Versus**

Gangotri Glazed Tiles Pvt. Ltd.,

...Opponent

**in**

**CP(IB) No. 473 of 2018**

SVM Cera Pvt. Ltd.

...Applicant

**Versus**

Gangotri Glazed Tiles Pvt. Ltd.,

...Respondent

*Humar*

**Order delivered on 6<sup>th</sup> August, 2019**

**Coram: Hon'ble Ms. Manorama Kumari, Member (Judicial)**

**Appearance in I.A. No. 414/415 of 2019**

Advocate Mr. Mrugesh Vyas for the Applicant.

**Appearance in I.A. No. 176 of 2019**

None

**Appearance in CP(IB) No. 473 of 2018**

None

**COMMON ORDER**

1. The instant application IA No. 415 of 2019 is filed by the Applicant/the original Petitioner of CP(IB) No. 473 of 2018 for condonation of delay of 38 days in filing IA No. 414 of 2019 filed in IA No. 176 of 2019 in CP(IB) No. 473 of 2018.
2. The brief fact(s) of the case is/are that CP(IB) No. 473 of 2018 filed by the Applicant was dismissed on 11.01.2019 for non-prosecution, consequent upon which, the present Applicant filed one restoration application being No. IA 176 of 2019 under rule 48(2) and rule 11 of the NCLT Rules, 2016 with a prayer for restoration of CP(IB) No. 473 of 2018. The said application was also dismissed for non-prosecution.
3. Thereafter, when the Petitioner came to know that the application being No. IA No. 176 of 2019 filed for restoration, was also dismissed for non-prosecution, the applicant made another application being IA No. 414 of 2019 under rule 48(2) and rule 11 of the NCLT Rules, 2016. Since the same was not filed within a period of limitation i.e. one month, the applicant filed the instant application being IA No. 415 of 2019 with a prayer for condoning the delay of 38 days in filing restoration application being IA No. 414 of 2019. On perusal of the records, it is found that, on all the occasions, the application was dismissed for the fault of the advocate and the said fact was not in the knowledge of the Petitioner. When the Petitioner came to know that CP(IB)No. 473 of 2018 is dismissed due to fault of the advocate, he preferred IA No. 176 of 2019 for restoration of CP(IB) No. 473 of 2018 but the same was also dismissed on 11.01.2019, due to non-prosecution. Consequent upon which, the Petitioner had to file

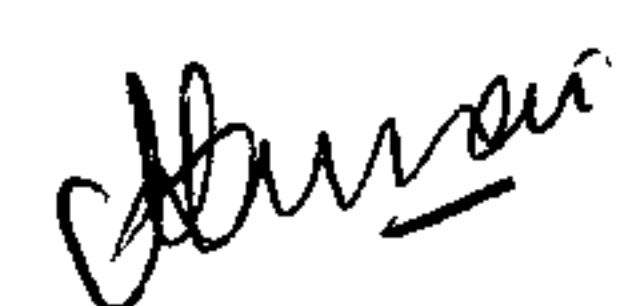


several Interlocutory applications for restoration of each IAs, so as, to restore the main petition CP(IB)No. 473 of 2018 viz. IA No. 414 of 2019 with IA No. 415 of 2019 for condonation of delay for restoration of IA No. 176 of 2019 in CP(IB)No. 473 of 2018.

4. Since all the Interlocutory applications are connected with each other, as such composite order is passed hereunder.
5. On perusal of the records, it is found that on all the occasions, the applications are/were dismissed for not taking steps by the advocate, as stated by the Applicant. Since it is a settled law that due to the fault of the advocate, the applicant/petitioner should not suffer, therefore, I find no impediment in restoring the CP(IB) No. 473 of 2018 by restoring IA No. 414 of 2019 and IA No. 176 of 2019 by condoning the delay of 38 days as prayed for in IA No. 415 of 2019. More so, in view of the amendment made in the Companies Act, 2013 in Section 424 which has been made applicable in respect of IBC also, which reads as under:

Section 424(2) The Tribunal and the Appellate Tribunal shall have for the purpose of discharging their functions under the Act, [or under Insolvency and Bankruptcy Code, 2018] the same powers as are vested in a civil court under the code of Civil Procedure, 1908 ( 5 of 1908) while trying a suit in respect of the following matters namely:

- (a) XXXXXXXX
  - (b) XXXXXXXX
  - (c) XXXXXXXX
  - (d) XXXXXXXX
  - (e) XXXXXXXX
  - (f) XXXXXXXX
  - (g) setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and
  - (h) any other matter which may be prescribed.
6. In view of the above amendments, I am of the view that CP(IB) No. 473 of 2018 can be restored by restoring IA No. 176 of 2019 and IA No. 414 of 2019 by condoning the delay of 38 days as prayed in IA No. 415 of 2019. Moreover, the Hon'ble Supreme Court in catena of cases, had settled the



**I.A. No. 414 with I.A. No. 415 of 2019  
in I.A. No. 176 of 2019  
in  
CP(IB) No. 473 of 2018**

law that in case of condonation of delay, the lenient view should be adopted by the courts. Under such circumstances, petitions/applications, so filed by the Petitioner/Applicant being IA No. 415 of 2019, IA No. 414 of 2019 and IA No. 176 of 2019 filed in CP(IB) No. 473 of 2018 are allowed and the orders so passed on 11.01.2019 and 04.04.2019 are set aside in respect of IA No. 176 of 2019 and CP(IB) No. 473 of 2018. Accordingly, CP(IB)No. 473 of 2018 is restored to file, with a cost of Rs. 20,000/-.

7. All the aforesaid applications are disposed of with this Composite Order.

*Ms. Manorama Kumari*

**Ms. Manorama Kumari  
Member (Judicial)**

**LCT**