

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**CHENNAI**  
**APPELLATE JURISDICTION**

**Company Appeal (AT) (CH) (Ins) No. 377/2022**

**(IA No. 886/2022)**

**(Under Section 61 of the Insolvency and Bankruptcy Code, 2016)**

**Against the Impugned Order dated 31/05/2022 in IBA(IBC)/482/2022 in**  
**C.P. (IB) No. 598/7/HDB/2019, passed by the ‘Adjudicating Authority’,**  
**(National Company Law Tribunal, Hyderabad Bench, Hyderabad)**

**In the matter of:**

**Divya Prabhas Developers Pvt. Ltd.**

**....Appellant**

**V**

**Tapaswi Infra Projects India Pvt. Ltd.**

**...Respondent**

**Present**

For Appellant : Mr. T.K. Bhaskar, Advocate  
For K. Harishankar, Advocate

**ORDER**  
**(Virtual Mode)**

**10/04/2023:**

‘Heard’, the Learned Counsel, Mr. T.K. Bhaskar, appearing for the ‘Appellant’, in the Instant Company Appeal (AT) (CH) (Ins) No. 377 of 2023.

‘Notice’ to the ‘Respondent’, sent through ‘Speed Post’, by the ‘Office of the Registry’, got returned with an endorsement, ‘Left without Instructions-Returned to Sender’.

Considering the fact that according to the Learned Counsel for the ‘Appellant’, the ‘Notice’, which was sent to the ‘Respondent’, is to the ‘Proper’ and ‘Correct’ address, as found in the Adjudicating Authority’s/ Tribunal’s

Records and also in the ‘Ministry of Corporate Affairs Records’, this ‘Tribunal’, without any haziness, holds that the ‘Service’ is held ‘Sufficient’. The Respondent’, is called ‘Absent’ and the Instant ‘Appeal’, is proceeded further by this ‘Tribunal’, for passing ‘Judgement’.

The Learned Counsel for the ‘Petitioner’/ ‘Appellant’, in IA(IBC)/482/2022 in C.P. (IB) No. 598/7/HDB/2019, on the file of the ‘National Company Law Tribunal, Hyderabad Bench, Court – II, has preferred the instant Company Appeal (AT) (CH) (Ins) No. 377 of 2022, before this ‘Tribunal’, assailing the Correctness, validity and Legality of the ‘Impugned Order’ of ‘Dismissal’, made in IA(IBC)482 of 2022 in C.P. (IB) No. 598/7/HDB/2019, by the ‘Adjudicating Authority’/ ‘National Company Law Tribunal, Hyderabad Bench, Court - II’.

Earlier, the ‘Adjudicating Authority’/ ‘Tribunal’ in IA(IBC)482/2022 in C.P. (IB) No. 598/7/HDB/2019 (preferred by the ‘Petitioner’/ ‘Appellant’) had observed the Following:

*“Learned Counsel for the Applicant appeared in person. This Application is filed by the Applicant seeking to restore the Petition CP(IB)598/7/HDB/2019, which has been dismissed on 26.04.2022 for non-prosecution. The Instant IA cannot be entertained for the reason that it is not for the first time that the Petitioner himself has not wanted to prosecute the Petition but on various earlier occasions he has been continuously absent and had not shown keen interest in prosecuting the*

*same. In view of the same a reasoned order was passed before the Petition was Dismissed. Hence, this Petition cannot be maintained and stands dismissed.”*

According to the ‘Petitioner’/ ‘Appellant’, the matter was posted on 28/04/2022, before the ‘Adjudicating Authority’, for ‘Final Arguments’, in C.P. (IB) No. 598/7/HDB/201. Due to some ‘Medical Difficulty’, suffered by the Learned Counsel for the ‘Appellant’, a request was made for an ‘Adjournment’, through a ‘Memo’, enclosing in and by which he was advised to take two (2) days rest. Despite a ‘Bonafide’ Request, for ‘Adjournment’, made by the Learned Counsel for the ‘Appellant’, the main C.P. (IB) No. 598/7/HDB/2019, came to be ‘Dismissed’, for ‘Non-Prosecution’, by the ‘Adjudicating Authority’/ ‘National Company Law Tribunal, Hyderabad Bench’, with an incorrect Observation that the Learned Counsel for the ‘Petitioner’/ ‘Appellant’ (Financial Creditor), had made an unsubstantiated request for an ‘Adjournment’, inspite of the fact that he had furnished written advice, by the ‘Physician’ to take two (2) days rest.

It comes to be known that in respect of the ‘Dismissal’ of the main C.P. (IB) No. 598/7/HDB/2019, the ‘Appellant’/ ‘Petitioner’, projected an IA(IBC)/482/2022, as per Rule 11, 48(2) and 58 of the National Company Law Appellate Tribunal Rules, 2016, seeking to set aside, the ‘Order’ dated 28/04/2022 and ‘Restoration’, of main ‘Company Petition’ to the file of the ‘Adjudicating Authority’/ ‘National Company Law Tribunal, Hyderabad Bench, Court - II’. But the ‘Adjudicating Authority’/ ‘National Company Law Tribunal, Hyderabad Bench, Court - II’ had ‘Dismissed’ the IA(IBC)/482/2022, through an

‘Impugned Order’, dated 31/05/2022, without assigning ‘Proper’ reasons and also had not appreciated the facts and circumstances, which the ‘Petitioner’/ ‘Appellant’, had projected before the ‘Adjudicating Authority’/ ‘Tribunal’. As a result, the ‘Tribunal’, had refused to restore the main C.P. (IB) No. 598/7/HDB/2019, to its file.

The Learned Counsel for the ‘Appellant’/ ‘Petitioner’ adverts to the ‘Memo’, dated 28/04/2022, filed before the ‘Adjudicating Authority’/ ‘National Company Law Tribunal, Hyderabad Bench, Court - II’, in main C.P. (IB) No. 598/7/HDB/2019 (Filed by the ‘Petitioner’/ ‘Appellant’), wherein, it was inter alia, mentioned that ‘on an earlier occasion i.e., on 07/04/2022, the Counsels of both the ends have agreed to ‘Complete’ the ‘Arguments’ on the next date of ‘Hearing’, i.e., 28/04/2022. It was very unfortunate that due to prolonged ‘Angina’, the ‘Cardiologist’, would like to rule out the possibility of any ‘Thrombosis’ and advised to rest for two (2) days and finally, it was submitted that there was no intentional non appearance by the Counsel for the ‘Petitioner’. Therefore, a date was prayed for, in a sympathetic manner for ‘Final’ Hearing of the main ‘Petition’, instead of dismissing the same’.

A Cursory Perusal of the ‘Impugned Order’, dated 31/05/2022 in IA/(IBC)482/2022 in main C.P.(IB) No. 598/7/HDB/2019, passed by the ‘Adjudicating Authority’ (National Company Law Tribunal, Hyderabad Bench, Court No – II) indicates that the ‘Adjudicating Authority’/ ‘National Company Law Tribunal, Hyderabad Bench, Court - II’ had not spelt out anything about the

Contents of the ‘Memo’ preferred by the ‘Petitioner’/ ‘Appellant’ and also not considered the aspect of ‘Angina’, the possibility of the ‘Cardiologist’, likely to rule out the possibility of any ‘Thrombosis’ and advised to rest for ‘Two Days’. In this connection, this ‘Tribunal’, pertinently points out that the ‘Adjudicating Authority’/ ‘Tribunal’ in the ‘Impugned Order’, had not said anything expressly or impliedly about the ‘Prolonged Angina’, of the Learned Counsel for the Appellant’s/ ‘Petitioner’s Medical suffering. Therefore, this ‘Tribunal’ is of the considered view that the ‘Impugned Order’ dated 31/05/2022 in IBA(IBC)/482/2022 in C.P.(IB)598/7/HDB/2019, is bereft of ‘Qualitative’ and ‘Quantitative’ reasons, thereby leading to the ‘miscarriage of Justice’. Furthermore, it is the ‘Prime Duty’ of an ‘Adjudicating Authority’/ ‘Appellate Tribunal’/ ‘Competent Court of Law’, whenever, it deals with an ‘Application’ and at the time of passing of an ‘Order’, it has to evaluate the ‘Pros’ and ‘Cons’ of the respective Contentions advanced and also to assign reasons for arriving at a ‘Proper’ and ‘Just’ Conclusion, of course, by adverting to the ‘Memo’ projected, dated 28/04/2022 and it is quite evident that the ‘Memo’ speaks for itself, in respect of the ‘Medical Emergency’/ ‘Inconvenience’/ ‘Suffering’, of the Learned Counsel for the ‘Petitioner’/ ‘Appellant’. A reasoned ‘Order’ will be the ‘Heart and Soul’ of any ‘Order’ to be passed in a ‘Prudent’ and ‘Rightful’ manner by an ‘Adjudicating Authority’/ ‘Tribunal’/ ‘Competent Court of Law’.

Considering the fact that the ‘Impugned Order’, dated 31/05/2022, in IBA(IBC)/482/2022 in C.P.(IB)598/7/HDB/2019, suffers from ‘Serious Legal

Infirmities’ and not dealt with the points, raised in the ‘Contents’ of ‘Memo’, dated 28/04/2022, one way or the other, in the instant subject matter in issue. As such, this ‘Tribunal’ is perforced to interfere with the ‘Impugned Order’, dated 31/05/2022 in IBA(IBC)/482/2022 in C.P.(IB)598/7/HDB/2019 and sets aside the same, in the ‘interest of Justice’, subject to the condition that the ‘Appellant’, shall pay a ‘Cost’ of Rs. 50,000/- (Fifty Thousand Rupees Only), to the Hon’ble Prime Minister’s National Relief Fund, of course, within a period of ‘8 Weeks’, from ‘Today’ and to produce the ‘Copy’ of the receipt, before the ‘Deputy Registrar’, of the ‘Adjudicating Authority’/ ‘National Company Law Tribunal’, Hyderabad Bench’, without ‘Fail’.

On payment of the said amount and the production of the ‘Receipt’, for having effected the ‘Payment’, the ‘Office of the Registry’, of the ‘Adjudicating Authority’/ ‘National Company Law Tribunal’, Hyderabad Bench, is directed to restore to its file, the IBA(IBC)/482/2022 in C.P.(IB)598/7/HDB/2019, and to pass a reasoned ‘Final Order’ on ‘Merits, ‘afresh’ in a ‘Fair’, ‘Just’ manner and also in accordance with ‘Law’.

Before parting with the case, it is made quite clear by this ‘Tribunal’ that the Learned Counsels appearing for the respective Parties are permitted to raise all ‘Factual’ and ‘Legal’ Pleas and the same shall be adverted to, by the ‘Adjudicating Authority’/ ‘National Company Law Tribunal, Hyderabad Bench, Court - II’, at the time of passing the fresh ‘Orders’ in IBA(IBC)/482/2022 in C.P.(IB)598/7/HDB/2019, in a dispassionate manner, (uninfluenced and

untrammelled with any of the Observations made by this ‘Tribunal’ in the instant ‘Appeal’), within ‘8 Weeks’, from the date of ‘Restoration’. Resultantly, the instant Company Appeal (CH) (AT) (Ins) No. 377 of 2022, stands ‘Disposed of’, in the above ‘Terms and Observations’. Connected Pending IA No. 886 of 2022 (For ‘Exemption’), is ‘**Closed**’.

**[Justice M Venugopal]**  
**Member (Judicial)**

**[Shreesha Merla]**  
**Member (Technical)**

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