

IN THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH, COURT V

RESTORATION APPLICATION. No. 13/2023

In

CP(IB)No. 172/MB/C-V/2022

*Application filed under Rule 11 of N.C.L.T Rules,
2011 for restoration of the Company Petition.*

In the matter of

J.C. Flowers Asset Reconstruction Pvt. Ltd.

...Applicant

V/s

Essel Infraprojects Ltd.

...Respondent

Order Pronounced on :- 20.10.2023

Coram:

Smt. Anuradha Sanjay Bhatia : Member (Technical)

Shri. Kuldip Kumar Kareer : Member (Judicial)

Appearances

For the Applicant : Mr. Anil T. Agarwal, Advocate.

**For the Respondent : Adv. Nausher Kohli i/b M/s. Vidhii
Partners, Advocates.**

ORDER

Per: Bench

1. Heard the learned Counsels for the Applicant and the Respondent.
2. On perusal of this application, it appears that this is an application filed under Rule 11 of the N.C.L.T Rules, 2016 for restoration of CP(IB) No. 172(MB) of 2022 which was dismissed as infructuous by this Tribunal vide Order dated 14.03.2023. The Adjudicating Authority had already admitted the Respondent-Corporate Debtor to the Corporate Insolvency Resolution Process ('CIRP') on a Petition filed by the State Bank of India in Company Petition No. 543 of 2021 vide Order dated 01.03.2023 passed by the Hon'ble N.C.L.T., Mumbai Bench, Court-V. As the Respondent had already been admitted to CIRP on a petition filed by another financial creditor, this Hon'ble Tribunal by an Order dated March 14, 2023 had dismissed the Company Petition of the Applicant as infructuous with liberty to file a claim with the IRP.
3. The Respondent has filed an Affidavit-in-reply dated 20th June, 2023 in this matter. The Respondent has objected to the restoration application filed by the Applicant on the many grounds, one of them being that no liberty was sought by or given to the Applicant for reviving the petition in the Order

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dated 14th March, 2023. The Respondent further states that the liberty was given to the Applicant only for filing/lodging its claim with the IRP. Rest of the contentions in the Respondent's Affidavit-in-reply deal with the merits of the Company Petition, which need not be gone into at this stage.

4. The Hon'ble National Company Law Appellate Tribunal ('NCLAT') vide its Order dated 28th April, 2023 in Company Appeal (AT) (Insolvency) No. 329 of 2023 had set-aside the Order dated March 01, 2023 of NCLT, Mumbai in Company Petition No. 543 of 2021. This has necessitated the Applicant to move an application seeking the restoration of its Company Petition against the Respondent.
5. The Applicant was not a party in C.P. (IB) No. 543 of 2021. The reversal of the Order of this Tribunal by the Hon'ble NCLAT was beyond the Applicant's control. Therefore, dismissing the restoration application on the technical ground that no liberty for the restoration was granted is neither tenable nor it is in the interest of justice.
6. The application for restraint order and status quo in I.A. No. 733/2023 in CP(IB) No. 172(MB)/2023 was already heard on merits and decided on 28.02.2023. Hence, the objections of the respondent w.r.t prima facie case, balance of convenience and irreparable injury are not maintainable. With the revival of main petition, the interim order passed therein would also stand revived unless vacated by this Court or until further orders.

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7. **ORDER**: In view of the facts and circumstances of the case, we deem it appropriate to restore the company petition as well as the order of status-quo passed during the pendency of the company petition. Accordingly, we pass orders as follows:

- a. **Company Petition (IB)/172(MB) of 2022 is hereby restored.**
- b. The Registry is directed to list the matter on board.
- c. The **Status Quo Order dated 28.02.2023 in I.A. No. 733/2023 in C.P. (IB)/172(MB)/2022 also stands revived** and the parties herein are directed to maintain status quo with regard to the hypothecated assets mentioned in the Deed of Hypothecation including the shares of ESUCRL held by the Corporate Debtor till further orders.

Sd/-

ANURADHA SANJAY BHATIA

(MEMBER TECHNICAL)

Sd/-

KULDIP KUMAR KAREER

(MEMBER JUDICIAL)