

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
CHENNAI BENCH
Company Appeal (AT) (CH) (Ins) No. 218 of 2022**

IN THE MATTER OF:

R. Vijayakumar

...Appellants

Versus

M/s. IEL FinexPvt Ltd.

...Respondents

Present:

For Appellants: Mr. R. Ragavendran, Advocate

For Respondents:

ORDER
(Virtual Mode)

18.07.2022: This Appeal is directed against the order dated 03.02.2022 by which an application filed by the Appellant for 'Restoration of the Application', filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for short 'Code') which was dismissed for non-prosecution on 25.03.2021.

Shorn of unnecessary details, the Appellant had filed an Application under Section 7 of the Code in order to claim a sum of Rs. 10 Lakh (Principal amount) and Rs. 1,30,000/- towards interest from the Respondent.

The matter lastly came up for hearing on 11.03.2021. When the Adjudicating Authority had passed the following order:

"Ld. Counsel for the Petitioner Mr. R. Ragavendran is present through video conferencing mode. None appears on the part of the Corporate Debtor.

It is represented by the Ld. Counsel for the Petitioner that the Petitioner is yet to give instructions in this regard, namely, order dated 24.02.2021.

In the circumstances, Ld. Counsel for the Petitioner seeks for an adjournment. Already a last and final opportunity was given by this Tribunal to the parties to report for settlement or to proceed with the matter vide order dated 24.02.2021.

Ld. Counsel for the Petitioner without fail on the next date of hearing to report either that the Petitioner seeks to withdraw this petition or to continue this petition, failing which, we will be constrained to dismiss this petition for non-prosecution of the Petition on the next date of hearing which is posted on 25.03.2021”.

The case was posted on 25.03.2021, but on that date no one had appeared on behalf of the Appellant and therefore, the Adjudicating Authority had passed the following order:

“None appears for the parties. Perusal of the order dated 11.03.2021 discloses the following observations made in the final paragraph of the said order:-

Ld. Counsel for the Petitioner without fail on the next date of hearing to report either that the Petitioner seeks to withdraw this petition or to continue this petition, failing which, we will be constrained to dismiss this petition for non-prosecution of the Petition on the next date of hearing which is posted on 25.03.2021.

In the absence of the Petitioner, we are constrained to dismiss this Petition for non-prosecution.”

The Appellant had moved an Application for revival of the Application filed under Section 7 of the Code on 15.12.2021 by recalling the order dated 25.03.2021.

The said Application has been dismissed by the impugned order dated 03.02.2022 and hence this Appeal is filed under Section 61 (1) of the Code.

Ld. Counsel for the Appellant has vehemently argued that the Adjudicating Authority has committed an error in not allowing the Application for Restoration filed by the Appellant despite the fact that the Appellant is a Senior Citizen and was unwell during the period he could not put in appearance.

We have heard Ld. Counsel for the Appellant and perused the available record. It is an admitted fact that the Appellant has given his Vakalatnama (Power of Attorney) to the arguing Counsel who appeared on his behalf before the Ld. Tribunal. On 11.03.2021, Ld. Counsel had put in appearance along with the Appellant before the Adjudicating Authority when the order mentioned herein above was passed laying down the condition that if the Appellant would fail to appear on the next date of hearing to report either that he wanted to withdraw the Petition on account of settlement or wanted to continue with the Application, the Adjudicating Authority shall be constrained to dismiss the Appeal for non-prosecution.

Incidentally, neither the Appellant in person nor his advocate had appeared on 25.03.2021 and thus there was no other alternative with the Adjudicating Authority but to dismiss the Application filed under Section 7 for non-prosecution.

Counsel for the Appellant has submitted that he could not put in appearance on that day because the Appellant had failed to provide him the correct information which he mentioned before the Tribunal.

Be that as it may, without making any comment upon his non-appearance, we are satisfied that the Appellant was remiss in not appearing before the Tribunal despite a categorical direction and also filed the Application for restoration after a period of nine months without giving any explanation.

Thus, the overall act and conduct of the Appellant, shows that he was not interested in pursuing the Application filed before the Adjudicating Authority and as such there is no error in the impugned order which requires interference.

In view of the above, the present Appeal is found to be devoid of merits and the same is hereby dismissed. No costs.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Kanthi Narahari]
Member (Technical)