



**THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV**

Restoration Application (IBC)/53(ND) 2025

in

CP (IB) NO. 263/ND/2025

IN THE MATTER OF: -

CREATIVE CAPITAL SERVICES LTD.

...APPLICANT / FINANCIAL CREDITOR

VERSUS

AKSHAJ ESTATE PRIVATE LIMITED

...CORPORATE GUARANTOR

CORAM:

**SHRI MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)**

**SHRI ATUL CHATURVEDI
HON'BLE MEMBER (TECHNICAL)**

Order Delivered on: 05.08.2025

PRESENT:

For the Appellant : Mr. Paras Mithal, Adv.

ORDER

PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. Under consideration is an application bearing **Restoration Application (IBC)/53 (ND) 2025** filed by under Rule 11 of National Company Law Tribunal Rules, 2016 seeking the following reliefs:



“(a) Restore the Company Petition (I.B.) NO. 263 of 2025 filed before this Hon'ble dated 27.04.2025

(b) Pass any other order(s) as this Hon'ble Tribunal may deem fit and proper in the interest of justice.”

2. As per the averments made in this application, the applicant has sought restoration of Company Petition (I.B.) NO. 263 of 2025 which was dismissed by this Adjudicating Authority for non-prosecution vide order dated 05.06.2025.
3. The Applicant has submitted that the captioned matter was first listed on 14.05.2025. Despite the counsel's continuous efforts, no official intimation regarding the listing was received by the Applicant. Upon personally visiting the Tribunal on 14.05.2025, the counsel learned that the matter was listed that very day and the Order dated 14.05.2025 recorded that no one appeared on behalf of the Applicant and the matter was adjourned to 05.06.2025.
4. Subsequently, on the next date of hearing, the Applicant submitted that matter unfortunately coincided with another matter filed by the same Financial Creditor against a sister concern of the present Respondent, i.e., CP (I.B.) No. 262 of 2025, which was listed as Item No. 301 in the matter of *Creative capital services limited v. Akshaj infra private limited* before NCLT, New Delhi Bench, Court No. 3. Consequently, the counsel for the Applicant was unable to appear before this Tribunal at the time when the instant matter was called.



5. However, it is respectfully submitted that the counsel remained logged in via virtual conferencing throughout the proceedings and, immediately upon conclusion of the connected matter, made a bona fide and earnest attempt to mention the instant matter before this Tribunal. However, the matter before this Adjudicating Authority was already called and the Order recorded that the matter was dismissed for non-prosecution.
6. The Applicant herein submits that the ends of justice would be defeated if the captioned Company Petition is not restored to its original position. The dismissal of the Petition was neither deliberate nor intentional but occurred due to circumstances beyond the control of the Applicant. Non-restoration of the Petition would result in irreparable harm and prejudice to the Applicant. It is, therefore, prayed by the Applicant to restore the Company Petition in the interest of justice. The present application is made bona fide, and without any intention to delay the proceedings or to cause any inconvenience to the Respondent.
7. For ready reference, it would be appropriate to mention here the provisions of Rule 11 and Rule 48 of NCLT Rules, 2016;-

“Rule 11. Inherent Powers: *"Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal."*

Rule 48. Consequence of non-appearance of applicant:



(1) Where on the date fixed for hearing of the petition or application or on any other date to which such hearing may be adjourned, the applicant does not appear when the petition or the application is called for hearing, the Tribunal may, in its discretion, either dismiss the application for default or hear and decide it on merit.

(2) Where the petition or application has been dismissed for default and the applicant files an application within thirty days from the date of dismissal and satisfies the Tribunal that there was sufficient cause for his non-appearance when the petition or the application was called for hearing, the Tribunal shall make an order restoring the same.”

- 8.** As per the provisions enumerated under Rule 11, Tribunal is vested with inherent powers to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of process of the law. The Court of law or Tribunal may use its inherent power only in that case where no specific provision regarding the matters has been enumerated in any Rule of Law. So far as this matter is concerned, Rule 48 as mentioned (supra) enumerates that when an Applicant has defaulted in appearing before the Tribunal and the case has been dismissed for default, as per the Rule 48(2) if the Applicant files an application within 30-days from the date of dismissal and satisfy the Tribunal that there are sufficient causes for his non-appearance when the Petition or the application was called for hearing, the Tribunal shall make order to restore the same.



From the provisions of Rule 48, it is clear that the Rule to restore the application is on the behest of the Applicant itself. Rule 48 is a clear provision for restoring the application on consequence of non-appearance of the applicant

9. On perusal of the record, we find that **CP (IB) NO. 263/ND/2025** was dismissed on 05.06.2025 for non-prosecution. The Order dated 05.06.2025 is reproduced here-below:

“This Tribunal by order dated 14.05.2025, recorded that no one appeared on behalf of the Applicant. Today also no one appears on behalf of the Applicant despite repeated calls. This conduct of the Applicant shows that Applicant is no more taking steps to pursue further with this matter. Therefore, the present matter i.e. IB/263/ND/2025 is dismissed for non-prosecution.”

10. The Applicant has filed this present application i.e. RA/53/ND/2025 on 24.06.2025. Be that as it may, we take note of the reasons given by the Ld. Counsel for the Applicant for non-appearance and hold that the non-appearance was unintentional and not deliberate therefore, this restoration application stands allowed for the reasons mentioned by the Applicant subject to payment of Cost of **Rs. 1,00,000/- (One lakh Rupees)** to be deposited in the ‘Prime Minister’s National Relief Fund’ within one week of this Order.

11. Accordingly, with the above observations, **Restoration Application (IBC)/53 (ND) 2025 is Allowed and Disposed of. Resultantly, the CP (IB) NO. 263/ND/2025 stands restored to its original stage, subject**



to payment of Rs. 1,00,000/- (One lakh Rupees) in the Prime Minister's National Relief Fund within one week of this Order and the Applicant is directed to file proof of service of the same.

List the main CP (IB) NO. 263/ND/2025 on 25.08.2025 along with proof of payment.

**Sd/-
ATUL CHATURVEDI
MEMBER (TECHNICAL)**

**Sd/-
MANNI SANKARIAH SHANMUGA SUNDARAM
MEMBER (JUDICIAL)**