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**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH - I, CHENNAI**

IA/243/CHE/2021 in IBA/420/2020

*(Application filed under Rule 11 and Rule 48 of National Company Law
Tribunal Rules, 2016)*

*In the matter of **M/s. SVE Engineers Private Limited***

M/s. GMV Engineering Private Limited

CIN: U29253TN2013PTC091623

...Applicant/Operational Creditor

Vs.

M/s. SVE Engineers Private Limited

CIN: U36999TN1998PTC040362

...Respondent/Corporate Debtor

Order Pronounced on 1st November 2021

CORAM:

**R. SUCHARITHA, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)**

*For Applicant: A.R. Karunakaran, Advocate
Benjamin E. Moses, Advocate
G. Prithviraj, Advocate*

ORDER

Per: R. SUCHARITHA, MEMBER (JUDICIAL)

This Application filed under Rule 11 and Rule 48 of the National
Company Law Tribunal Rules, 2016 (hereinafter "NCLT Rules") is



submitted by the Applicant/Operational Creditor M/s. GMV Engineering Private Limited (hereinafter "Applicant").

2. The Applicant who is the Director of the Operational Creditor Company has filed this Application seeking following reliefs:

- (i) That for the reason of non-appearance in VC hearing due to technical issues (explained in detail in paragraphs 4, 5 and 6 of the application), this Tribunal may be pleased to allow this Application and thereby restore the Application No.IBA/420/2020 to be heard on merits in the interest of justice and equity.
- (ii) Pass such other or further order as this Tribunal may deem fit and proper under the circumstances of the case and in the interest of justice and equity.

3. It is averred in the Application that an application bearing number IBA/420/2020 was filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter "IBC,2016") and the same was listed before this Tribunal through virtual hearing on a video conferencing platform on 24.11.2020. The Applicant was directed to prove that that the above mentioned Section 9 application was maintainable under IBC, 2016 vide Order dated 24.11.2020. The matter was adjourned to 11.01.2021.



4. The Learned Counsel for the Applicant submits that on 08.01.2021, the Applicant had filed an Additional paper book in IBA/420/2020. The Learned Counsel for the Applicant further submits that the matter was listed again on 11.01.2021 before the Tribunal via Video Conferencing platform as item No. 12 in the afternoon list which commenced hearing at 2.15 pm. The Counsel for the Applicant attempted to log in to the Video conference Platform at 2.15pm using the link provided in the cause list for 11.01.2021. However, even after several attempts to log in, the Counsel was unable to connect to the video conference platform due to connectivity /technical issues.

5. The Counsel for the Applicant further submits that he attempted to log in and waited until 3.30pm in vain. As there was no other option left, the Counsel rushed to the NCLT in person however, the matter had already been taken up by the Tribunal and due to non-representation on the part of the Operational Creditor in the virtual hearing, the matter was dismissed for non-prosecution by Order of this Tribunal dated 11.01.2021 as follows:

None is present for the Applicant. It is seen from the Application filed before this Tribunal vide Order dated 24.11.2020 Petitioner was directed to prove this Application is maintainable under IBC, 2016. However, no representation today on behalf of the Applicant and in the circumstances, we are constrained to dismiss this Application for non- prosecution.



6. The Learned Counsel submits that, the Applicant, aggrieved by the Order of this Tribunal dated 11.01.2021, has filed the present interlocutory application before this Tribunal for setting aside the Order dated 11.01.2021 passed by this Tribunal in IBA/420/2020 and to restore the same on the file of this Tribunal.

7. The Learned Counsel for the Applicant further submits that the Non-Prosecution and Non- representation by the Counsel was neither wilful, nor wanton but solely due to the technical/connectivity issues. It is averred in the Application that they were ready to argue the matter on 11.01.2021.

8. The Learned Counsel for the Applicant submits that the Applicant/Operational Creditor will be put to irreparable loss and hardship if the Order dated 11.01.2021 is not reopened and if Application No. IBA/420/2020 is not restored for hearing.

9. The reason stated by the Applicant appears to be reasonable and plausible. Further this Tribunal is also satisfied that there was sufficient cause for the Petitioner for his non-appearance before this Tribunal on 11.01.2021. Hence this Tribunal is of the considered view that IBA/426/2020 should be restored back on file, subject to the



payment of **Rs.10,000/-** (*Rupees Twenty Five Thousand only*) by the Applicant to the 'Prime Minister's National Relief Fund' within a period of 15 days from today. Accordingly, IBA/420/2020 stands restored back on the file of this Tribunal.

10. The Registry shall forward the copy of this order to both the parties. The petitioner shall also forward this order along with notice of next date of hearing of IBA/420/2020, to the Respondent and file proof of service in the Registry of this Tribunal before the next date of hearing.

11. Accordingly, IA/243/CHE/2021 stands **allowed**.

-sd-
(ANIL KUMAR B)
MEMBER (TECHNICAL)

-sd-
(R. SUCHARITHA)
MEMBER (JUDICIAL)

Hari Priya