

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

**CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER**

**SHRI ATUL CHATURVEDI,
HON'BLE TECHNICAL MEMBER**

Rst. A (IBC) No. 01/9/JPR/2023
In CP No. (IB)- 57/9/JPR/2020

IN THE MATTER OF:

MR. RAKESH KUMAR
(SOLE PROPRIETOR, ON BEHALF OF M/S RAKESH TRADERS)

...OPERATIONAL CREDITOR

VERSUS

M/S COSMOPOLIS INTERIORS PRIVATE LIMITED

... CORPORATE DEBTOR

MEMO OF PARTIES

Rst. A (IBC) No. 01/9/JPR/2023:

MR. RAKESH KUMAR
(Sole Proprietor, on behalf of M/s Rakesh Traders)
Opp. Karol Mistan, Calgiri Road,
Malviya Nagar, Jaipur-302017
(Rajasthan)

...APPLICANT

VERSUS

COSMOPOLIS INTERIORS PVT. LTD.
Plot No. B-1/2B, C- Block, Ground
Floor, SDC Gateway, Kalidas Marg,
Banipark, Jaipur- 302016
(Rajasthan)

...RESPONDENT

FOR THE APPLICANT

: Gulshan Kumar Kumawat, Adv.

Sd

Sd-

Order Pronounced On:31.08.2023

ORDER


Per: Shri Deep Chandra Joshi, Judicial Member

1. This Application has been filed by the *Mr. Rakesh Sharma*, Sole Proprietor of *M/s Rakesh Traders* ('Applicant') under Rule 48(2) read with Rule 11 of NCLT Rules, 2016 and read with Order 41 Rule 19 of Civil Procedure Code, 1908 for restoration of *CP No. (IB)- 57/9/JPR/2020* which was dismissed in default vide order dated 31.01.2023 by this Adjudicating Authority.
2. The Applicant submitted that he engaged an Insolvency Professional Firm headed by *Mr. Prashant Agrawal* for the recovery from the Corporate Debtor and he counselled the applicant to prefer an Application before this Adjudicating Authority. Accordingly, the Applicant filed the application under Section 9 of the Code before this Adjudicating Authority through the advocate engaged by *Mr. Prashant Agrawal* on 13.02.2020. Consequently, the matter was listed for admission on 26.02.2020 and later reposted on 12.03.2020 due to administrative reasons. Further on 12.03.2020, the notices were issued by this Adjudicating Authority. Thereafter due to Covid- 19 Pandemic, the Central Government issued directions in respect of restrictions for physical appearances, and *Mr. Prashant Agrawal* informed the Applicant about the non- listing of the matter.
3. The Applicant further submitted that he was regularly pursuing the matter through *Mr. Prashant Agrawal*. The applicant on numerous occasions



enquired about the status of the case wherein he informed the applicant that the case is going on smoothly and the notices have been issued and dates are being given as the Respondent is not appearing before the Adjudicating Authority. The Applicant also paid professional fees to *Mr. Prashant Agrawal*.

4. On 01.05.2023, the Applicant approached this Adjudicating Authority and submitted an Application to inspect his file and the concerned section officer asked him to appear on 01.05.2023 at 3:00 pm for the inspection. The Applicant was informed that the case has been dismissed in default due to non- appearance of the advocate vide order dated 31.01.2023. It is averred that the Applicant has never engaged another counsel nor signed any Vakalatnama for assigning the main matter except on behalf of the firm of *Mr. Prashant Agrawal*.
5. It is further submitted that the copy of the order dated 31.01.2023 sent by this Adjudicating Authority was not delivered to the Applicant. The Applicant applied for the certified copy of the petition and the same was delivered on 17.05.2023. Hence, the Applicant submits that the absence of the counsel in the aforesaid circumstances is unintentional and bonafide. The Applicant may not be put to loss on account of such absence on the part of the counsel. If the CP is not restored to its original position, the Applicant will suffer irreparable loss which cannot be compensated at any cost.



6. Notices were issued to the Respondent. An affidavit of service was filed by the Petitioner. There was no representation on behalf of the Respondent. Hence the submissions were heard.
7. This application under Section 9 of IBC, 2016 was filed on 13.02.2020. This matter came up for effective hearing after a long time due to COVID-19 Pandemic. On 25.03.2022, Mr. Mudit Manohar, Adv. appeared on behalf of the Petitioner/ Operational Creditor. On 12.05.2022, Ms. Pooja Singh, Adv. appeared on behalf of the Petitioner and sought time to file Vakalatnama.
8. On 30.06.2022, none appeared on behalf of the Petitioner. Further, Mr. Rohan Agarwal, Adv. appeared on behalf of the Petitioner/ Operational Creditor and sought time to file Vakalatnama on 01.08.2022. The matter was fixed for 13.09.2022. On that day, none appeared on behalf of the Petitioner. The matter was fixed for 14.10.2022, due to paucity of time, the matter could not be taken up and the matter was posted to 23.11.2022. On 23.11.2022, Mr. Rohan Agarwal, Adv. appeared on behalf of the Petitioner and submitted that one more opportunity may be given for filing Vakalatnama.
9. On perusal of the record, it was found that the petitioner is not serious to prosecute the present application. Time and again, the counsels have been changed and sought time to file Vakalatnama. The matter was listed for 05.12.2022 and thereafter on 21.12.2022, on that day also none appeared for the petitioner. Due to non-appearance of the Applicant for the date fixed i.e., 31.01.2023, the petition was dismissed for non- prosecution.

10. Despite several opportunity given to the petitioner to prosecute the petition, there was no serious effort from the side of the petitioner and time and again counsels were changed and sought time to file Vakalatnama. Finally, the matter was dismissed on 31.01.2023 for non- prosecution.
11. In this matter, no effective hearing could take place due to irregular appearance on behalf of the petitioner and there was no representation on behalf of the Respondent despite service. In view of the facts narrated in the application and in the interest of justice, order dated 31.01.2023 is set aside and CP No. (IB)- 57/9/JPR/2020 is restored subject to deposit of Rs. 10,000/- in Prime Minister's National Relief Fund.
12. This application is allowed and stands disposed of accordingly. The Registry is directed to serve the copy of this order on both the parties to the case at the earliest.



**DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**



**ATUL CHATURVEDI,
TECHNICAL MEMBER**