



IN THE NATIONAL COMPANY LAW TRIBUNAL,
NEW DELHI COURT III

Item No. 102

IA-932/2023

In

IB-393(ND)/2022

IN THE MATTER OF:

M/s. Sunder Engineering Works through Mr. Siddhant Jain Proprietor

.....OPERATIONAL CREDITOR

Vs.

M/s. MAV Steels Pvt Ltd.

.....CORPORATE DEBTOR

SECTION

U/s 9 of IBC, 2016

Order Pronounced on 14.07.2023

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

Order pronounced in open court vide separate sheets. IA-932/2023
is **allowed** and **disposed of**.

-SD-

(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

-SD-

(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)



ORDER

PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. This is an Application filed before this Adjudicating Authority under Rule 49(2) read with Rule 11 of the National Company Law Tribunal Rules, 2016, for setting aside the ex-parte order dated 18/11/2022 passed by this Tribunal in IB-393/(ND)/2022, for seeking the following reliefs:

“1. Allow the present application and consequently set aside the order dated 18.11.2022 whereby the Corporate Debtor was proceeded as ex-parte from the present proceedings pending before the Hon'ble Tribunal.

2. Stay the Company Petition No. IB-393/(ND)/2022 filed by the respondent for initiating the CIRP process against the Applicant until the outcome of the present Application

3. Such other orders may kindly also be passed by the Hon'ble Tribunal as deemed fit and proper in the facts and circumstance of the case.”

2. The main Company Petition IB-393/(ND)/2022 was filed by the Operational Creditor in which the first date of hearing was 30.05.2022, but none appeared on behalf of the Applicant and the matter was adjourned to 26.07.2022.
3. On 26.07.2022 and on 02.08.2022, the matter was adjourned due to paucity of time and was listed on 03.08.2022. On 03.08.2022, notice had been issued to the Corporate Debtor and the matter was listed on 25.08.2022.
4. On 25.08.2022 the petitioner was granted liberty to serve dasti notice upon the Respondent and file proof of service along with an affidavit as none had appeared on the behalf of the Corporate Debtor despite the service being held as notice had been served through email and speed post by counsel for the Petitioner and dasti notice was served to the Corporate Debtor and the matter was listed on 27.09.2022. The Corporate Debtor received the dasti notice in the



month of September and after receiving the notice, Corporate Debtor came to know about the proceeding. Corporate Debtor immediately approached to the operational creditor for settlement and the Corporate Debtor in terms of settlement transferred a sum amounting to Rs. 30,00,000/- (Thirty Lakh Rupees only) in the account of the Operational Creditor in the month of September. The details of the transfer are filed along with the application.

5. On 18.11.2022, the petitioner filed proof of service of dasti along with an affidavit and on the said date the Corporate Debtor through its authorized person joined the matter virtually but due to unstable Internet connectivity the appearance of said authorized person was not recorded and hence the matter got ex-parte and thereafter the matter was listed on 12.12.2022.
6. The Applicant has mentioned that a non - prosecuting of this instant Application is neither intentional nor malafide by the Corporate Debtor and it is by virtue of the above-explained circumstance, the Corporate Debtor was unable to proceed with the present proceedings earlier. After having the knowledge of the present proceeding Corporate Debtor made preparation to move this application to get the ex-parte order dated 18.11.2022 set aside.
7. On 16.01.2023, Mr. Saurabh Sharma, Adv. appeared on behalf of the Corporate Debtor before this Tribunal and requested to file the appropriate application for setting aside the ex-parte order dated 18.11.2022.
8. We have heard the Ld. Counsel appearing for the Applicant and also perused the documents on record.
9. We are of the considered view that the present application is allowed subject to the imposition of a Cost of Rs. 25,000/- (Rupees Twenty Five Thousand Only) on the Applicant i.e. M/s. MAV Steels Private Limited. The cost is to be deposited in the Bharat Kosh within one week from the pronouncement of this Order. The Applicant is directed to produce proof of payment on the next date of the hearing.



10. In the said circumstances, prayer sought in the present application stands **allowed**.
11. The Respondent is directed to file reply affidavit, if any, within one week in the main matter (IB) – 393(ND)/2022.
12. We direct the Registry to list the main matter (IB) – 393(ND)/2022 on 04.08.2023 for arguments.
13. In case, no reply has been filed and no one has appears on the next date of the hearing, the appropriate order will be passed in the main matter (IB) – 393(ND)/2022.
14. The Parties are directed to file a list of dates, events and issue-based charts with relevant submissions with a copy in advance to the other side.
15. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.
16. The Registry is further directed to accept the reply affidavit filed by the Respondent, if any.

-SD-

**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

-SD-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**