



**THE NATIONAL COMPANY LAW TRIBUNAL
"CHANDIGARH BENCH, CHANDIGARH"**

**IA No. 1674/2022
In
CP (IB) No. 180/Chd/Hry/2021
Under Rule 49 of NCLT Rules, 2016**

In the matter of:

MRG Infrabuild LLP ...Financial Creditor
Versus
Murliwala Realcon Pvt. Ltd.Corporate Debtor

In the matter of IA No. 1674/2022

M/s Murliwala Realcon Pvt. Ltd.
Flat No.104, Urban Greens,
Plot No.6A, Sector-29,
Gurugram Haryana-122001
...Applicant/Corporate Debtor
Versus

M/s MRG Infrabuild LLP
110, Best Sky Tower, NSP,
Pitampura, New Delhi-110034
...Respondent/Financial Creditor

Order delivered on: 04.07.2023

**Coram: Hon'ble Mr. Harnam Singh Thakur, Member (Judicial)
Hon'ble Mr. Subrata Kumar Dash, Member (Technical)**

Present:

For Petitioner : Mr. A.S. Narang, Advocate for petitioner in main and
respondent in IA No.1674/2022.

For Respondent : Mr. Reshab Bajaj, Advocate for the respondent in Main
CP and applicant in IA No.1674/2022.

IA No. 1674/2022
In
CP (IB) No. 180/Chd/Hry/2021



Per: Subrata Kumar Dash, Member (Technical)

ORDER

The present application is being filed by the applicant-corporate debtor Murliwala Realcon Pvt. Ltd. under Rule 49 of the NCLT Rules, 2016 for setting aside the Ex-Parte order dated 20.09.2022 passed by this adjudicating authority.

2. The brief facts of the case, as stated by the applicant are that:-

- i) The application for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor was filed and on 03.12.2021 and notice was issued to the corporate debtor to show cause as to why the petition shall not be admitted. Thereafter, the counsel engaged by the corporate debtor appeared before this adjudicating authority seeking time for filing a reply and the matter had been adjourned several times for the same purpose.
- ii) In the intervening period, the financial creditor initiated criminal proceedings against the Directors of the corporate debtor and lodged FIR No. 497 dated 26.07.2021 under Sections 406 and 420 of IPC, 1860 registered at Police Station Sector-10, Gurugram. This led the Directors of the corporate debtor under constant pressure due to which they could not follow up with their engaged counsel regarding the status of the petition mentioned above filed by the financial creditor.
- iii) Subsequently, the Hon'ble Punjab and Haryana High Court in its order '*Sushil Kaudinya and Anr. Vs. State of Haryana*', CRM-M 35001 of 2021



dated 08.11.2021 granted pre-arrest bail to the Directors of the corporate debtor.

- iv) The Directors of the corporate debtor were under the impression that their counsel was appearing and pursuing the above-captioned petition. However, they were unable to be updated about the petition, and due to this miscommunication, the counsel for the corporate debtor failed to file a reply and appear in the above-captioned matter.
- v) It was only recently that the representatives of the corporate debtor were made aware of the order dated 20.09.2022, in which, due to the lack of representation, the corporate debtor has been proceeded ex-parte by this adjudicating authority.
- vi) It has been stated that such lack of representation on behalf of the corporate debtor was unintentional and prejudice will be caused if the opportunity of representation has not been granted to the corporate debtor as the present petition has been filed without placing on record relevant facts. Further, the corporate debtor has deposited Rs.10,000 in 'PM Cares Fund' as per the order dated 02.08.2022 of the adjudicating authority. The online receipt has been attached as Annexure A-4 of the application.

3. The respondent-financial creditor i.e. MRG Infrabuild LLP has filed its reply via Diary No. 924/03 dated 03.02.2023 and the following contentions have been raised:-



- a) The above-captioned petition was listed before the adjudicating authority on 03.12.2021 in which notice had been issued to the corporate debtor and a time of two weeks was granted for the filing of its reply. On the next date of hearing i.e. 24.03.2022, a second opportunity was granted to the corporate debtor on the request of the counsel of the corporate debtor to file its reply, and the matter was adjourned to 23.05.2022.
- b) The counsel for the corporate debtor again submitted that he had failed to file a reply and sought more time to file the same, thereby, last opportunity to file a reply was granted and the matter was adjourned to 02.08.2022.
- c) On 02.08.2022, the matter was listed before this adjudicating authority and the counsel for the corporate debtor again appeared and sought more time for filing the reply. This adjudicating authority imposed cost on the corporate debtor and granted one last opportunity to file a reply to the corporate debtor in the interest of justice. It was held as under:-

"On last date of hearing, last opportunity was granted to the respondent-corporate debtor for filing the reply and Vakalatnama however, today it is stated by Ms. Shelly Arora, Advocate, proxy counsel for Mr. Arjun Shukla, Advocate for respondent-corporate debtor that Advocate Mr. Arjun Shukla is suffering from high fever. No medical certificate has been shown to us. In the interest of justice, respondent-corporate debtor is granted one more opportunity for filing the reply subject to payment of cost of Rs. 10,000/-to be deposited in PM Cares Fund'. It is made clear that no further opportunity will be granted for filing the reply. Reply be filed within four weeks with a copy in advance to the counsel opposite and rejoinder thereto, if any, be filed two weeks thereafter with a copy in advance to the counsel opposite. The matter be listed on 20.09.2022."



- d) On the next date of hearing, i.e. 20.09.2022, neither did anyone appear on behalf of the corporate debtor, nor any reply was filed or costs deposited. Thereby, this adjudicating authority listed the main petition for the final hearing on 30.11.2022 for ex-parte arguments.
- e) It has been submitted by the respondent that this conduct of the corporate debtor is nothing but an attempt to delay adjudication of the petition filed under Section 7 of the Insolvency and Bankruptcy Code, 2016, by the respondent-financial creditor.
- f) The respondent has placed reliance on the judgment of the Hon'ble Supreme Court of India in the case of '**Shiv Cortex Vs. Trigun Auto Plast Private Limited and Others**' [(2011) 9 SCC 678] in which it has been held that:-

"17. However, the absence of the lawyer or his non-availability because of professional work in other court or elsewhere or on the ground of strike call or the change of a lawyer or the continuous illness of the lawyer (the party whom he represents must then make alternative arrangement well in advance) or similar grounds will not justify more than three adjournments to a party during the hearing of the suit. The past conduct of a party in the conduct of the proceedings is an important circumstance which the courts must keep in view whenever a request for adjournment is made. A party to the suit is not at liberty to proceed with the trial at its leisure and pleasure and has no right to determine when the evidence would be let in by it or the matter should be heard. The parties to a suit-whether the plaintiff or the defendant-must cooperate with the court in ensuring the effective work on the date of hearing for which the matter has been fixed. If they don't, they do so at their own peril."

4. We have heard the learned counsels for the parties and perused the records available.



5. We observe that in the present case, more than four opportunities were given to the applicants to represent their case before the impugned ex-parte order was passed by this Bench for initiating CIRP. It is also seen that during the relevant period, the applicant was pursuing other cases before other Judicial Authorities, and hence, the alleged miscommunication resulting in the lack of representation of the petition before this Adjudicating Authority appears to be a mere excuse. We also place reliance on the decision (supra) of the Hon'ble Apex Court, wherein it is held that a party to the suit is not at liberty to proceed with the trial at its leisure. As the timelines are very important in the summary proceedings being undertaken by this Adjudicating Authority, there was no scope for giving further opportunities by this Bench. In view of such facts, we find no justification and reasonable ground to accede to the applicant's prayer for setting aside the ex-parte order.
6. Thus, IA No.1674/2022 stands dismissed and is disposed of accordingly.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

July 04, 2023
JGS/PRF