

IN THE NATIONAL COMPANY LAW TRIBUNAL : NEW DELHI  
COURT-III

(IB)-255(ND)/2017

IN THE MATTER OF:

M/s. Sanghi Distributors  
Vs.  
Odeon Builders (P) Limited

... PETITIONER

... RESPONDENT

SECTION :

Under Section 9 of IBC Code, 2016

Order delivered on 13.9.2017

Coram :

R. VARADHARAJAN,  
Hon'ble Member (Judicial)

For the Petitioner/Applicant : Mr. Rishi Raj, Advocate..for Op. Creditor

For the Respondents : -

ORDER

This is an application filed by the Petitioner/Operational Creditor under Rule 48 (2) of the National Company Law Tribunal, 2016 seeking for restoration of the case in IB-255(ND)/2017 to its original number and to hear the matter.

Perusal of the records as available on 08.8.2017 with this Hon'ble Tribunal discloses that on 08.8.2017, the matter was called and that even at the time of second call in the afternoon session, nobody had put in appearance to support the petition. In the circumstances, this Tribunal was constrained to dismiss the petition for non-prosecution.

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It is further seen from the endorsement made by the Registry in relation to the petition that the Petition was filed on 02.8.2017 and was diligently posted before this Tribunal on 08.8.2017 that too within a period of 6 days from the date of filing. However, the reference to the application as filed by the applicant/Operational Creditor discloses that certain allegations against the Registry had been made which cannot be accepted on the face of it. It is also further required to be seen that invariably, the matter which is listed before this Tribunal on any specified date is also uploaded in the website as maintained by this Tribunal and hence is required to be taken as due intimation/notice to all concerned of the hearing.

In view of the same and more so in relation to the Petition filed under the Insolvency and Bankruptcy Code, 2016, where the Petitioner/Operational Creditor is required to be vigilant about the listing and diligent in prosecuting, as both the petitioners as well this Tribunal in relation to the disposal are required to abide by the time line. Though in relation to the Tribunal, it has been held by the Hon'ble NCLAT in JK Jute Mills Company Limited vs. M/s. Surendra Trading Company in Company Appeal (AT) No.09 of 2017, exception can be made, no such leeway has been given to the Petitioner in relation to time line and thereby for its prosecution. Keeping the same in mind, it is seen that filing of the Petition was on 02.8.2017 and was listed on 08.08.2017 on which date, it suffered a dismissal order due to non-prosecution. However, it is seen that the petitioner has sought to file this application for restoration after 27 days i.e. on 06.9.2017 even beyond the statutory period of disposal of 14 days which shows clearly a lack of diligence on the part of the petitioner in prosecuting this matter.

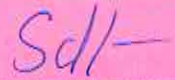
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The Hon'ble NCLAT in the case of Lokhanderwala Kataria Construction Private Limited vs. Nisus Finance & Investment Manager LLP in Company Appeal (AT) (Insolvency) No.95 of 2017 has also held that Rule 11 of NCLAT Rules, 2016 relating to the residuary powers is not available with this Tribunal and that the Rules if at all which can be considered as applicable in relation to IBC, 2016 is only Rule 20 to 26 of the NCLT Rules, 2016.

Keeping in view the above as well as the decision rendered by the Hon'ble NCLAT as cited above, it is trite that Rule 48 (2) of National Company Law Tribunal Rules, 2016 sought to be invoked for restoration in the instant case will not apply. This Tribunal has also taken a similar position in the matter of Mr. Nityanand Singh and Company Versus Ferrous Infrastructure Private Limited , rendered in (IBC)-171/ND/2017 wherein a similar application had been preferred for restoration which had been dismissed considering all the above this application is dismissed as not maintainable.

Surjit  
13.9.2017

  
(R. VARADHARAJAN)  
MEMBER (JUDICIAL)