

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**SINGLE BENCH**  
**NEW DELHI**

(IB)-189(ND)/2017

**SECTION: UNDER SECTION 7 IBC Code, 2016**

**IN THE MATTER OF:**

**State Bank of India**

. ....Petitioner

A body Corporate Constituted under the State Bank of India Act, 1955, having its Corporate Centre at State Bank Bhawan, Madame Cama Road, Nariman Point, Mumbai and one of its Local Head Office At Sector17-B, Chandigarh and one of its Branches called stressed Assets Management Branch, situated at 1st Floor, LHO Building, Sector-17 A, Chandigarh – 160017.

V/s

**Namdhari Food International Pvt. Ltd.**  
307,NDM-2,  
Netaji Subhash Palace,  
Pitampura,  
New Delhi-110034

.....Respondent

**Coram:**

**R.VARADHARAJAN**  
Hon'ble Member (Judicial)

**For the Petitioner** : **Mr. Sanjiv Kakra, Advocate**  
**Mr. Kanwal Kakra, Advocate**

**For the Respondent** : -



**Respondent for Intervener :**

**ORDER**

**Order rendered by: Shri R.Varadharajan**

This is an application which has been filed by the applicant bank in the capacity as a Financial Creditor against the Corporate Debtor on the ground that the Corporate Debtor has defaulted in the payment of a sum of Rs.61,99,53,876.79 and in the circumstances it has been forced to file the Insolvency Application as specified above. It is further submitted in the instant application being CA No.06/C-3/2017 that a prayer has been made to restore the petition to its original position which had been dismissed for non-prosecution by this Tribunal vide order dated 6.7.2017. The applicant further states that the insolvency application was filed on 27.6.2017 and thereafter even though enquiries were made with the Registry on 28.6.2017 as well as on 30.6.2017, no specific date of posting was forthcoming. However, the applicant submits that on 6.7.2017 when



again enquiries were made, it was found that the matter had been listed on 5.7.2017 and re-notified to 6.7.2017 and on the said date due to non-appearance of applicant, the insolvency application had been dismissed. The applicant states that the non-appearance of the applicant is neither intentional nor deliberate and had occasioned due to the circumstances stated above. At the time of oral representation, it was further submitted that great prejudice would be caused if the insolvency application is not restored and proceeded further in the matter. Ld. Counsel for the applicant also pointed out Rule 48 of the National Company Law Tribunal Regulations, 2016 and represented that this Tribunal has the power to set aside the order of dismissal for default.

2. It was also pointed out by the Ld. Counsel for the applicant that 14 days mandatory period as specified in the IBC, 2016 for either admitting or rejecting the application had not expired even at the time of filing of this application seeking for restoration of the insolvency application. In any case, it is also further pointed





out by the Ld. Counsel for the applicant that applying the ratio of JK Jute Mills Company Limited's case passed on 1.5.2017 by the Hon'ble NCLAT in CA(AT)No.09/2017, the Financial Creditors stand on a different footing as compared to the Operational Creditors and in the circumstances, this Tribunal is hence required to set aside the order of dismissal for non-prosecution.

3. We have considered the submission made by the Ld. Counsel for the Petitioner as well as averments made in the application and affidavit accompanying it. It is not in doubt that the main insolvency application has been filed by State Bank of India being the Financial Creditor for unleashing the Corporate Insolvency Resolution Process against the Corporate Debtor on 27.06.2017. The amount which is claimed as per the insolvency application filed by the Financial Creditor is stated to be in a sum of Rs.63,53,44,632.63/-. It is also evident from the amount claimed that it is quite substantial sum which the Financial Creditor despite repeated notices as well as approaching other forums have not be in a position to recover and this ultimately



had made the Financial Creditor Bank to seek and avail the provisions of IBC,2016 by approaching this Tribunal bringing to light the insolvency of Corporate Debtor. However, a Financial Creditor and also being the petitioner, handling that too public funds, the onus is on the bank to proceed diligently with the petition which it has preferred before this Tribunal. It is also clear from the provisions of Section 7 of IBC,2016 in relation to Financial Creditor or for that matter in relation to an Operational Creditor under Section 8 read with Section 9 of IBC,2016 that the time limit stands on the same footing both in respect of Financial Creditors vis-à-vis Operational Creditors (i.e.) from the date of presentation as is also evident from the judgement of Hon'ble NCLAT passed in JK Jute Mills Company Limited case and as cited by the Ld. Counsel for the applicant. The statutory period fixed is 14 days and in so far as this Tribunal is concerned will operate from the date of listing before this Tribunal. The first date of listing of the matter from the records it is seen is on 5.7.2017 and as stated in the application it was again re-posted to




6.7.2017, on which date this Tribunal was compelled to dismiss the petition for non-prosecution, due to non-appearance of the Petitioner. It is further seen from the records that application for restoration of the insolvency application has been filed on 7.7.2017. The applicability of Rule 48 of National Company Law Tribunal Rules, 2016 will not be applicable to IBC,2016 stricto sensu as evident from the time period provided therein for an application for restoration is 30 days whereas under IBC,2016 this Tribunal is required to deal with the application for Insolvency itself within a period of 14 days. However, keeping in view the circumstances and the plea made by the applicant in the application as well as from the date of first posting on 5.7.2017, 14 days period has not expired and also taking into consideration that the applicant bank has acted promptly in filing the application for restoration that too within the said period of 14 days, even taking into consideration the date of presentation, being 27.07.2017, we allow this application and the insolvency application in IBC No.189/2017 stands restored to its original





state, subject however to payment of costs in a sum of Rs.25,000/- to Prime Minister's National Relief Fund within ten days from the date of this order. List the main C.P. on 11.08.2017.

  
02/08/17  
(R.VARADHARAJAN)  
MEMBER (JUDICIAL)

U.D.Mehta  
29.07.2017

