

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH

CP No.92/ND/2014

*(Companies Act, 1956 Sections 397,
398, 399, 235 and 237 read with
Sections 402 and 403)*

IN THE MATTER OF
Mirza Arif Beg & another.

..... Petitioner

Versus

Bhuddha Hospital Private Limited.

.....Respondents

JUDGMENT/ORDER DELIVERED ON 19.09.2017

Coram : Hon'ble Shri H.P. Chaturvedi, Member (J)

For the petitioner : Sh. Ashok Kumar, Advocate

For the Respondent : Udai Chandani, Advocate

As per..... Hon'ble Shri H.P. Chaturvedi, Member (Judicial)


The present company application is filed on behalf of the applicants (respondent no.2, 3 & 4 in the main company petition) under Rule 49 read with Rule 11 & 15 of the NCLT Rules to recall the order impugned dated 03.03.2017, with further prayer to give them an opportunity for filing their counter affidavit to the main company petition and thus to provide a substantial justice to them.

The applicants (respondents) in support of the present application would submit that their counsel could not able to file their vakalatnama in the Registry of this Tribunal before on 24.03.2017 and prior to such date they were not aware of passing impugned order dated 03.03.2017 for setting them as exparte. Hence, after coming to know about passing of the order impugned, they immediately pursue their mater with their counsel, who in turn approached this court by filing the present

application. The applicants have further explained that there were certain mis-happening in the family of respondent no.2 who was mainly responsible and expected to look after the present case on behalf of the other respondents (e.g. no.3 & 4) also however the above stated respondent no.2 belatedly approached to his counsel only on 16.04.2017 for filing the present application for setting aside the impugned ex parte order dated 03.03.2017. Thus, the applicants now pray for to provide them one more opportunity for filing their counter affidavit by recalling the order impugned dated 03.03.2017 and thus to provide substantial justice to them.

The applicants/petitioners have filed another CA No.186/2017 before this Court for delay condonation almost taking similar ground/ reasons that their counsel immediately had informed to them about passing of impugned order by this Court, but due to some mis-happening in the family of respondent no.2 (who is said to be responsible for pursuing the present case on behalf of the other respondent no.3 & 4). He approached belatedly to his counsel only on 16.04.2017 and thereafter the present application was filed without further delay. Thus, the petitioners have made such prayer for condonation of delay caused in filing of the present application for setting aside ex parte order and requested for the main application to be considered on its merit.

However, contrary to this the company petitioner through his counsel strongly has opposed both the applications mainly on such reasons that the ex parte order passed by this Court was well within the knowledge of respondents as their counsel had already appeared before this Court on many previous occasion and had sought for adjournment. Hence, the reasons shown for setting aside the ex parte order is neither sufficient nor convincing one. Further, no reasonable cause is shown for not making appearance on earlier hearing before this Court, which cannot be said to be sufficient one for setting aside such ex parte order. That apart for condoning of the delay also the applicants have taken only a vague plea stating about some mis-




happening in their family but did not make prompt and diligent efforts in filing of delay condonation application. Hence, it would not be appropriate for this Court to permit the applicant/respondent in further participation in proceeding of this case and to recall the impugned order. Hence, as per the Respondent/Petitioner these applications are liable to be rejected being devoid of merit as well as being time barred. It is further contended by them, that no case is made out for condonation of delay in filing such applications, as the applicants are required to provide for day to day explanation for the delay caused. Therefore, on this count alone the present application for delay condonation is liable to be rejected.

It is also alleged that the recall application is not filed properly and bonafidly and it is intended to get further adjournment and thus to delay the hearing time and disposal of the present case. Hence, such the recall is application is equally liable to be rejected on lacks of its merit as well as on the ground of limitation.

We have gone through the content of the Present/Application and duly considered the facts & circumstances of the case.

Having heard, the rival submission made before us by the learned counsel for both the parties, we feel that although the reason shown for recalling the impugned order for setting them as *ex parte* does not seems to be fully convincing nor the explanation given for condonation of delay is satisfactory, yet in order to provide substantial justice to the parties concern and to afford them a fair opportunity for filing their reply so that the present case can be decided on its merit we do not feel appropriate at this stage to reject the application on some technical ground. Moreover, we are of the view, that the rejection of the present application may lead to multiplicity of the proceedings among the parties, hence, this court is equally expected to avoid the same. Further, there would be no serious prejudice to the interests of the petitioner, if, the prayer sought for in the applications is allowed because the Respondent/Petitioner would get afresh liberty to file additional



rejoinder to the reply of the company petition and the inconvenience caused, if any, can be compensated by appropriate cost.

Considering the above stated facts and circumstances of the present application we felt that the present CA. No. 41/2017 and CA. No. 186/2017 deserve to be allowed with certain condition. Hence, it is allowed with a cost of Rs.10,000/- payable to the petitioner with further direction that their counter reply to the main company petition ^{to be} filed within two weeks and to make compliance of payment of cost within two weeks from the date of the receipt of copy of this order. In case, the reply has already been filed than it shall be taken on record only after making payment of the cost.

With the above stated observation the present application is conditionally allowed and stand disposed of.

Dated:19.09.2017

Typed by:
Md. Zaid


Shri H.P. Chaturvedi, Member (Judicial)