

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

**CA NO.07/2017
CA NO.08/2017 and
CA NO.09/2017
IN
CP NO. 17(ND)/2016
RT NO.13/2016**

IFCI Ltd.

...Petitioner.

Versus

M/s IND Swift Ltd. & Ors.

...Respondents.

Present: Mr. Prateek Mahajan and Mr. Vipul Sharma,
Advocates for applicant – M/s Edelweiss Asset
Reconstruction Company Limited.
None for respondents.

Learned counsel for M/s Edelweiss Asset Reconstruction Company Limited has filed three applications, CA Nos.07/2017, 08/2017 and 09/2017. One is for restoration of the petition dismissed in default, second for condonation of 59 days delay in filing the application for restoration under Section 5 of the Limitation Act read with Rule 11 of the NCLT Rules 2016 and third for substitution of the petitioner as the applicant is stated to be an assignee of the loan.

Heard. The prayer for condonation of delay is based on the fact that the petitioner company informed the applicant on 06.12.2016. In view of the aforesaid reasons, the delay in the filing of the application is condoned.

After hearing the counsel for applicant we find no ground for restoration of the petition. We say so for the reason that reliance upon Section 5 of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 cannot help the petitioner as it is applicable in case

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of the pending suit/appeal or other proceedings. The learned counsel for the applicant also referred to the judgement of Hon'ble Supreme Court reported in Raj Kumar v. Sardari Lal (SC): Law Finder Doc Id #66759. It was held as under:-

"13. The appellant cannot dispute that the decree though passed against the respondent Nos.2 and 3 could be executed even against the respondent No.4, he being a lis pendens transferee though not having been joined in the suit as a party. Such a person can prefer an appeal being a person aggrieved. Clearly, the person who is liable to be proceeded against in execution of the decree or can file an appeal against in decree, though not a party to the suit or decree, does have locus standi to move an application for setting aside an ex-parte decree passed against the person in whose shoes he has stepped in. In the expression employed in Rule 13 Order 9 of the Civil Procedure Code that 'in any case in which a decree is passed ex-parte against a defendant, he may apply for an order to set it aside' the word 'he' cannot be construed with such rigidity and so restrictively as to exclude the person, who has stepped into the shoes of the defendant, from moving an application for setting aside the ex-parte decree especially in the presence of Section 146 of the Civil Procedure Code."

It was further held that:-

"15. A lis pendent transferee, though not brought on record under Order 22 Rule 10 of the Civil Procedure Code, is entitled to move

(R. Wajid)
[Signature]

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an application under Order 9 Rule 13 to set aside a decree passed against his transferor – the defendant in the suit.”

There can be no quarrel with the above proposition of law.

It would be seen in this case that when the matter was pending before the Company Law Board it was observed on 16.02.2016 that the counsel for petitioner at the outset stated that some of the important facts have been left out from incorporation and need to be brought on record and it was directed to list the matter as and when the needful is done. Thereafter the case was received by transfer by the Tribunal and taken up on 31.08.2016. Notice was directed to be issued to the petitioner for making compliance of the earlier order. Order dated 21.09.2016 would show that despite service of the petitioner there was no representation from the petitioner and the petition was dismissed in default.

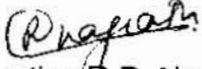
In view of the aforesaid, the petition on the basis of assignment agreement dated 23.03.2016 registered on 10.06.2016 was a fact not in existence when the matter was adjourned on 16.02.2016 by the Company Law Board. The dismissal of the company petition in default may not bar the applicant in filing a fresh petition for seeking appropriate relief. The application for restoration is, therefore, dismissed in default and consequently CA No.

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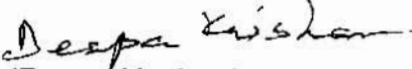
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9/2017 filed under Order 22 Rule 10 CPC read with Rule 11 of NCLT Rules
2016 is rendered infructuous.


(Justice R.P. Nagrath)
Member (Judicial)

January 12, 2017

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(Deepa Krishan)
Member (Technical)