

**In the National Company Law Tribunal  
Single Bench, Chennai**

IA/8/IB of 2017  
[TCP/20&21&22&23/(IB)/CB/2017]

M/s. Hofincons Infotech and Industrial Services Limited

V/s

M/s. SBQ Steel Limited

Order delivered on: 27.09.2017

For the Applicant : Shri R.R. Pradeep, Advocate

For the Respondent : Shri Rohan Rajasekaran, Advocate

**Per: K. ANANTHA PADMANABHA SWAMY, MEMBER (J)**

**ORDER**

1. Under Consideration is an Interlocutory Application filed by M/s. Hofincons Infotech and Industrial Services Limited (hereinafter called as, 'Applicant') praying to restore the above captioned transferred company petitions.
2. Before proceeding with the matter, it is pertinent to mention herein that this Bench vide its order dated 31.07.2017 dismissed the said transferred petition for default and closed the matter.
3. It is also necessary to mention the Para Nos. 3 and 4 of an affidavit signed and filed by Mr. G. Senthilkumar, one of the counsel on record of the Applicant, which are produced below:-

*3) I submit the above matter came up for hearing on 20.07.2017 before this Hon'ble Tribunal and on the said date the respondent filed counter alongwith the annexure and copy served on us on 21.07.2017. Whereas we have noted the date of hearing of the case as 25.08.2017 but the case has been listed on 25.07.2017. On the said date there is no representation on behalf of the petitioner and then the case was posted on 31.07.2017 at 10:30 A.M. On the said date also we are not present as we have noted the date of hearing wrongly. Hence the case was dismissed for default.*

*4) I submit on 01.08.2017 I had come to the tribunal for verifying the dates of posting of other cases at the time I found out from the registry that the above case came up on 31.07.2017 and the case dismissed for default.*

4. Mr. R.R. Pradeep, learned counsel appearing for the Applicant submitted that non-appearance on the above mentioned dates is neither wilful nor wanton and no prejudice would be caused to anyone, if the said petition is restored on the file of this Tribunal. He further submitted that unless the petition is restored, it would put irreparable loss and hardship.

5. Shri Rohan Rajasekaran, the learned counsel for the respondent vehemently opposed the submissions put forth by the counsel for the Applicant and submitted that the application should be dismissed

with exemplary costs and confirm the order passed on 31.07.2017. He further submitted that the said application ought to have been filed by invoking the Rule 48 of the NCLT Rules, 2016 and the same is patently erroneous and the application is liable to be dismissed on this solitary ground.

6. He also submitted that the Cause List of NCT, Chennai Bench is uploaded in advance for the following day and the Applicant cannot plead that he was unaware of the hearing dates. He further submitted that the Applicant was duty bound to have diligently prosecuted the petition in question and the instant application warrants no consideration because of negligence or ignorance of the Applicant.
7. He further submitted that if the present application is allowed, it would tantamount to a gross miscarriage of justice in so far as the same would defeat the mandate of the IB Code 2016 with regard to time bound disposal of petitions and also there is no such provisions in the IB Code 2016 which provides for the restoration of a petition. The learned counsel finally submitted that a flimsy ground such as mistake in entering hearing dates ought not be considered and prayed to reject the application with cost. The learned counsel also relied on two judgements passed by the Hon'ble Supreme Court in **(1995) 6 Supreme Court Cases 148** and **(2009) 2 Supreme Court Cases 205** in this regard.

8. In view of the above circumstances and also taking the submissions of both the counsel, I am of opinion that the reasons given by the Applicant is sustainable and in the interest of justice, I feel that it is an appropriate case for this adjudicating Authority to put the clock back for further hearing on merits. I also feel that if the application is allowed, no prejudice will be caused to the respondent in any manner, for the reason he still will have a fair opportunity to place his defence and prosecute the matter before this Adjudicating authority. Therefore, the instant interlocutory application is allowed and TCP/20&21&22&23/(IB)/CB/2017 is restored accordingly.
9. However, the Applicant is directed to make a payment of costs of Rs. 5000/- to the Respondent. The Applicant is further directed to prosecute the matter in all sense and spirits for speedy disposal of the matter.
10. In the result, the order dated 31.07.2017 passed in the subject transferred petitions stands vacated subject to the payment of costs of Rs. 5000/- by the Applicant within 7 days from the date of receipt of the certified copy of this order.
11. The registry is directed to inform both the parties and list the matter on 11.10.2017.



**K. ANANTHA PADMANABHA SWAMY**  
**MEMBER (J)**

RLS