

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

CA. No. 128 of 2017
in
C.P. No. 5/ 241/ HDB/2016
Under Rule 48 R/w 11 of NCLT Rules, 2016

In the matter of

1. Vamsidhar Maddipatla, aged about 42 years
S/o M.V.R. Prasad R/o Villa No. 62-63,
Orion Villas, Raidurgam, Beside Raidurgam
Police Station, Serilingampally, Ranga Reddy
2. Dr. Ibrahimpatnam Krishna, aged about 60 years
S/o I. Lingaiah, R/o H.No. 8-3-169/83,
Plot No. 83, Sidsidhartha Nagar, Vengalrao Nagar
Hyderabad – 500 038.

Petitioners 1 and 2 are rep by their GPA holder
Nikhil Baheti S/o Madhavdas Baheti, aged 27 years,
R/o Plot No. 17, Flat No. 201,
Sri Srinivasa Nivas Apartment, New Maruthi Nagar,
Road No.3, Kothapet
Saroornagar, Ranga Reddy
Telangana – 500 035. .

..Applicants/Petitioners

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OF THE ORIGINAL



Versus

1. Teckbond Laboratories Pvt. Ltd
Having its office at Geetanjali Residency
Plot No. 2, Navodaya Colony, Road No. 14
Banjara Hills, Hyderabad – 500 034
Rep by its Authorized Person Sri C. Sanjeev Baba
2. Clininvent Research Private Ltd
Having its office at Block No. BN, Plot No. 7, Salt Lake
Electronics Complex, Sector V,
Kolkota – 700 091.
3. C. Sanjeev Baba Aged: 32, S/o C. Srinivasa Baba
Plot No. 6, Road No. 3, Banjara Hills,
Arora Colony, Hyderabad – 500 034, Telangana, India
4. T. Bose Babu, aged about 61 years,
S/o T. Venkatakrishnayya, Flat No. 110,
Vijaya Towers, Nagarjuna Nagar, Ameerpet,
Hyderabad – 500073, Telangana, India.

5. Swapan Bhattacharya, Managing Director,
M/s Clininvent Research Private Limited Block BN,
Plot 7, Salt Lake Electronics Complex, Sector V,
Kolkata – 700091 West Bengal, India.
6. Rahul Das Gupta, Aged: 57 years, S/o A Dasgupta,
48/2, Kali Temple road, Kolkata - 700 026
West Bengal, India. ...Respondents/Respondents

Date of order: 11.09.2017

CORAM:

Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)

Parties / Counsels present

For the Petitioners :

Shri M.V. Pratap Kumar,
& Ms. Manasi Chaudhari,
Advocates

For the Respondent No.2 & 6

Shri G. Rama Chandra
Rao, Advocate



Per: Rajeswara Rao Vittanala

ORDER

1. The present Company Application bearing CA No. 128/2017 in C.P. No. 5/241/HDB/2017 is filed by Vamsidhar Maddipatla and another, (which is referred to as application hereunder) U/s 241, R/w Rule 48 & 11 of NCLT Rules, 2016 by seeking to set aside the order dated 09.02.2017 and consequentially restore CP. No. 5/241/HDB/2016 to the file of this Tribunal.
2. Brief facts, leading to filing of present application, which are relevant to the issue in question, are as follows:
 - 1) Shri Nikhil Baheti, GPA holder of the applicants has filed this Application by stating that the Applicants are under the

impression that the case would be prosecuted by their legal counsel. However, their counsel could not attend the hearing before the Tribunal as they are not aware of the listing of the case. They have filed a memo dated 07.03.2017 seeking permission of the Tribunal to withdraw the Company Petition with a leave to file a fresh petition. Subsequently, they came to know that the Company Petition was dismissed on 09.02.2017 for non-prosecution of the case. However, they did not receive the copy of the order. They were under the impression that the Tribunal automatically passes an order basing on the said memo.

- 2) It is stated that non-appearance of the applicants on the dates, when the matter was listed, is a bonafide mistake, which was neither willful nor wanton. They have expressed their apology for the inconvenience caused to the Tribunal.
- 3) It is stated that after obtaining legal advice, the present application is filed on 29th June,2017 by seeking to restore CP by setting aside the dismissal order dated 9.02.17.



The application is strongly opposed by the 2nd Respondent by filing a counter dated 19.07.2017 through Mr. Rahul Dasguta, by inter-alia stating as follows:-

- (i) The application is false, frivolous and malicious and the same is liable to be dismissed. The Applicants have not come with clean hands. As per Rule 48 of NCLT Rules, 2016, any restoration application should be admitted only if the same is filed within 30 days from the date of dismissal, which in the present case expired on 9.3.2017 itself. Even if the application is to be entertained after 30 days, it should be accompanied by the application seeking to condone with coherent reasons.

(ii) It is stated that the Tribunal ordered notice in main CP on 20.01.2017 to all the parties informing that the CP would be listed for hearing for admission on 30.01.2017. However, no one appeared for the Applicants / Petitioners. Accordingly, the case adjourned to 03.02.2017 & 9.2.2017 due to non-appearance of petitioner and their counsel. On all these dates, Respondent counsel was present. They have also stated that the Company Petition is filed without due authorization and they relied upon judgement of Duroflex Limited v. Johnny Mathew – (CA No.56 of 2003 in CP No. 18/2003. They further stated that filing a memo is nothing but to mislead this Tribunal. Even the memo filed for withdrawing is also not in the prescribed format, and it is filed so casually as copy of memo was not served on the respondents. They have further stated that the CP itself is not maintainable as they failed to establish essential requirements prescribed under section 231 of the Companies Act, 2013.



(iii) It is further contended that the Applicants are engaged in sharp practice of forum shopping and constitute an abuse of the process of law, and the present application is an instance of vexatious litigation. The present litigation is nothing but an effort by the Applicants to coerce the Respondents for their ulterior motives. They have stated that the application is motivated, and it is filed against the interest of Respondent No. 1 Company, and it is not in dispute that the Applicants / Petitioners has filed a civil suit before the City Civil Court seeking similar reliefs. Since NCLT is having jurisdiction over the issue, pursuing simultaneous litigation before civil court is against law and against the principles of natural justice. Therefore they submit that the application is liable to be dismissed.

4. In pursuance to the said reply of respondent, a reply affidavit/rejoinder dated 26th July, 2017 was filed on behalf of the applicant through Mr. Nikhil Baheti by denying the averments of the Respondent. They have disputed pointed out that affidavit was stated to have been signed on 19.07.2017 but it was notarized by a Notary in Kolkata on 17.07.2017. They have asserted that the present company application is deemed to be filed within 30 days of passing the order as they have filed a memo dated 7.3.17 which is within 30 days. Since, they have the said memo directly in the Tribunal, it is not necessary to serve copy on other side. They have further clarified that the said memo was signed on 7.3.17 and filed it on 10.03.17 in the Tribunal. Therefore, there is no delay in filing the application.
5. Again, another additional affidavit dated 26th July, 2017, was filed on behalf of applicants/petitioners, through their representative Nikhil Baheti, by inter alia, contending that they were under the impression that the Tribunal would automatically pass an order for withdrawal basing on the said memo filed in the Registry of NCLT and also expecting that the Tribunal would dispatch order copy to them. They have stated that the present application is filed basing on order copy obtained from Website. Even if there is a delay in filing application, they pray the Tribunal can condone delay by exercising inherent powers conferred on it under law.
6. I have heard Shri M.V. Pratap Kumar, Learned Counsel for the Applicant/Petitioner, and Shri Ram Chandra Rao, Learned Counsel for the Respondent and also perused pleadings of both the parties and the extant provisions of law on the issue.
7. The Learned Counsel for the Applicant / Petitioner, while reiterating the averments made in the Company Application, rejoinder/additional as briefly mentioned above, has further strenuously argued that allowing the application would not prejudice anybody's right. On the contrary, if the application is



dismissed, the applicants / petitioners would suffer irreparable damage and loss since they have meritorious in the main Company petition. He has also relied upon judgment of NCLT, New Delhi Bench passed in CP 118 (ND) 13 on 20th December, 2016, in the case of Radhey Shyam Sharma vs. Shrimat Mahaveer Buildcom (P) Ltd and Ors. He has further reiterated that there is no delay involved in the case since the restoration petition is filed within one month from the date of memo dated 07.03.2017.

8. Shri G. Ram Chandra Rao, Learned Counsel for the Respondent, on the other hand, has strongly opposed the application as it is frivolous, malicious with an intention to misuse the process of law. In fact, the CP is also filed by suppressing several material facts and the petition itself is frivolous and malicious and liable to be dismissed. Since the main CP itself is filed on frivolous and malicious grounds, it would not serve any purpose in allowing the application, as it would be against the Principles of Natural Justice.



9. The present application is filed under Rule 48 R/w Rule 11 of NCLT Rules, 2016. Rule 48(2) relevant here and same is extracted below for ready reference; -

48(2) Where the Petition or application has been dismissed for default and the applicant files an application within thirty days from the date of dismissal and satisfies the Tribunal that there was sufficient case for his non-appearance when the petition or the application was called for hearing, the Tribunal shall make an order for restoring the same:

Provided that where the case was disposed of on merits the decision shall not be re-opened.

Rule 11 deals with inherent power of the Tribunal.

The above Rule clearly states that the Tribunal is empowered to restore the petition which is dismissed for default if appropriate application is filed within 30 days from the date of order

provided Tribunal is satisfied with the cause shown by the party for his non-appearance.

10. In the light of above provisions, it is relevant to point out here that the case of the Applicants / Petitioners is that they were under the impression that the matter was being prosecuted by their legal counsel and the Tribunal would automatically pass an order of withdrawal once a memo dated 07.03.17 is filed in the Registry of NCLT and also awaiting copy of order of dismissal in question, would be dispatched by the Tribunal itself. All the cases listed before various Benches of NCLT would be uploaded on Website of NCLT and orders passed also would be displaced on Website. So, the contentions of applicants are not at all tenable. Applicants/Petitioners are so casual in filing the application for withdrawal and kept quiet, without following the status of the case. Admittedly, the Petitioner has entrusted the case to their counsel and he did not file any affidavit to show any reason for his non-appearance on the dates when the CP was listed. The record shows, before listing the C.P, the Registry of NCLT has also issued a letter dated 20th January, 2017 by intimating that CP was going to be listed on 30.01.2017. However, none appears for the Petitioners on 30.01.2017, 03.02.2017, and thus it was posted to 09.02.2017, under the caption for dismissal. However, the learned counsel for the respondents appeared on all the above dates, and insisted for early disposal of case. Since, none appears for the petitioners, the case was dismissed for default for non-prosecution.

11. The next question is whether the application is filed within 30 days as to entertain under provisions of Section 48(2) of NCLT. Admittedly, the present application has been received by the Inward of Registry only on 3rd July, 2017. So the date of dismissal order is 09th February, 2017, and 30 days time as prescribed under the said rule expired on 09th March, 2017. And there is no petition filed to condone delay even to consider on



merits. In any case, Memo dated 7.03.17 filed for withdrawal of main Company petition cannot be converted for setting aside of impugned dismissal order. The contentions raised by the applicants with regard to no delay/even if delay is there, to condone etc as mentioned above are not at all tenable, and thus they are hereby rejected. As rightly pointed by the learned counsel for the respondent, when there is express provision in the form of Rule 48(2) available, there is no question of exercising any inherent power conferred on this Tribunal. Therefore, the applicants failed to make out any case, so as to consider the relief as sought for and it is liable to be dismissed.

12. In the light of aforesaid reasons, the Company Application bearing CA No. 128/2017 in CP No. 5/241/HDB/2017 is dismissed. No order as to costs.



Sd/-
Rajeswarā Rao Vittanala
Member (Judicial)

Order received by the Registry on 12.9.20

प्रमाणित प्रति
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केस संख्या
CASE NUMBER *CA No. 128 of 2017 (NCLT CP No 5)*
निर्णय का तारीख *24/11/2016*
DATE OF JUDGEMENT *11.9.2017*
प्रति तैयार किया गया तारीख
MADE READY ON *12.9.2017*

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fcs Dy. Regr./Asst. Regr./Court Officer/
National Company Law Tribunal, Hyderabad Bench