

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.210 – Rst.A/11(AHM)2024

In

C.P.(IB)/211(AHM)2022

Proceedings under Section 9 IBC

IN THE MATTER OF:

H.S.Power Projects Pvt Ltd

.....Applicant

V/s

Dakshin Gujarat Vij Company Ltd

.....Respondent

Order delivered on: 26/06/2024

Coram:

Mr. Shammi Khan, Hon'ble Member(J)

Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:

For the Applicant :Mr. Ravi B Shah, Advocate

For the Respondent :

ORDER
(Hybrid Mode)

Rst.A/11(AHM)2024

1. This Restoration Application has been filed on 16.04.2024 by the Applicant/Operational Creditor U/r 48 of NCLT Rules, 2016 for seeking restoration of (CP)IB/ 211(AHM)2022 filed U/s 9 of the Insolvency and Bankruptcy Code, 2016 with following prayers:-

(A) *This Hon'ble Tribunal may be pleased to admit and allow the present application;*

(B) *recall the order dated 18/03/ 2024 passed by this Hon'ble Tribunal in (CP) IB No. 211(AHM) 2022 and further n1ay be pleased restore the said (CP) IB No. 211(AHM) 2022 to its original file with all the orders;*

(C) This Hon'ble Tribunal may be pleased to pass such other and further orders as may be deemed just and proper looking to the facts and circumstances of the case and in the interest of justice;

2. This Tribunal vide order dated 01.03.2024 granted seven days' time to the Applicant to file affidavit to this effect that there is no settlement in the matter as on date. However, no affidavit was filed by the applicant qua showing the compliance of the order of this Tribunal within stipulated period. Hence, vide order dated 18.03.2024 main case was dismissed due to the non-compliance and dis-obedience.
3. The submission of the learned counsel for the applicant is that his office has sent the affidavit for compliance to the client well in time. However, it was received belatedly from the client. On perusal of this application filed by the Applicant it reflects that the alleged affidavit of compliance annexed at Page No. 21 & 22 was sworn on oath at Ranchi on 20.03.2024 i.e. after dismissal of main case.
4. However, there is nothing on record to prove the oral submission made in this regard that affidavit was sent to the applicant well in time.
5. Further, in Para 6 of the application the Applicant has stated which is reproduced hereunder:-

“That the applicant filed an application for restoration vide application no. RST.A/9(AHM)2024 in C. P. (IB)/211(AHM)2022 but it was not considered by this Hon'ble Tribunal and disposed of vide order dated 08.04.2024. A copy of order dated 08.04.2024 is annexed herewith and mark as Annexure-C to this Application.”

6. Moreover, the affidavit sworn in support of this application the place of affirmation is shown as Odisha and the application verification has also shown as place, Odisha. However, the application has been filed by the Applicant with it combined affidavit which is in continuation of the application after verification. The Application and affidavit was signed by

the applicant on 08.04.2024 at Odisha. Whereas the same application was signed by the advocate on 09.04.2024 very next date of affirmation at Ahmedabad.

7. In view of the lack of explanation and discrepancies as stated above, we do not find any reason to recall our order dated 18.03.2024.

Accordingly, **Rst.A/11(AHM)2024** is dismissed.

Sd/-

**SAMEER KAKAR
MEMBER (TECHNICAL)**

Sd/-

**SHAMMI KHAN
MEMBER (JUDICIAL)**