

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT- II)

Item No. 204
IB-899/ND/2018
RA- 34/2024

IN THE MATTER OF:

M/s. Praveen Jain

... Applicant/Petitioner

Versus

M/s. Oum Lamitech Pvt. Ltd.

... Respondent

Under Section: 9 of IBC, 2016

Order delivered on 03.07.2024

CORAM:

SH. ASHOK KUMAR BHARDWAJ
HON'BLE MEMBER (J)

SH. SUBRATA KUMAR DASH
HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Adv. Vishwendra Verma & Adv. Riya Kumari, Adv. Shivali, Adv. Ajay Nagar

For the CD : Adv. Raghuveer Kapur

Hearing Through: VC and Physical (Hybrid) Mode

ORDER

RA-34/2024: The prayer made in the present application is for recalling the order dated 08.02.2024 in terms of which IB-899/ND/2018 could be dismissed for default. The plea raised in the application is that in terms of the order dated 04.01.2024, the matter was directed to be listed for obtaining the order of the Hon'ble President and the specific date was fixed. According to him, after the order dated 04.01.2024 (ibid), he lost the site of the matter and could not know about the listing of the matter on 08.02.2024. The present application could be preferred within 30 days from the date of the order dated 08.02.2024 i.e. the order in terms of which the IB-899/ND/2018 was dismissed for default. Ld. Counsel appearing for the Corporate Debtor submitted that in the Civil Suit pending before Trial Court i.e. CS1060/2018, on 19.02.2024 the Ld. Counsel appearing for the Corporate Debtor could submit that he had already preferred an application for Restoration of IB-899/ND/2018, while in the present application he has made an averment that he could know about the order dated 08.02.2024 on 19.02.2024, when

the proceedings before ADJ-06 in CS1060/2018 were scheduled for hearing. In some substance it's submission is that the Corporate Debtor is not fair in his stand either before this Tribunal or before the Ld. ADJ. As far as the present application is concerned, the same is preferred within 30 days from the order dated 08.02.2024. Besides, this Tribunal had earlier dismissed IB-899/ND/2018 on merits, but Hon'ble NCLAT could reverse the order and remit the matter back to this Tribunal. The order passed by Hon'ble NCLAT was upheld by Hon'ble Supreme Court, with the observation that the issue of pre-existence dispute and other issues need to be examined by this Tribunal. Once Hon'ble NCLAT expected this Tribunal to examine the issue on merits and Hon'ble Supreme Court refused to interfere with the order of Hon'ble NCLAT, it would otherwise also may not be proper to avoid deciding the application on merits, when the applicant has filed RA.

As far as the statement made on 19.02.2024 before Ld. ADJ is concerned, the proper course for the Applicant would be raised the issue before that Court only for appropriate action.

As far as this Tribunal is concerned, we deem it appropriate to recall the order dated 08.02.2024, in the interest of justice and fair play. **In the wake, the RA is allowed and the order dated 08.02.2024 is recalled. The IB-899/ND/2018 is restored to its original position.**

List IB-899/ND/2018 on 15.07.2024 on the top of the Board.

Sd/-
(SUBRATA KUMAR DASH)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)