

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

Item No. 213

(IB)-470(ND)/2017

IA-3192/2023, IA/904/2021, IA-6421/2023
CA-1654/2019, CA-479/2019, IA/3750/2020
IA/3053/2020, IA/2444/2020, IA/3202/2020
CA-1664/2019, IA- 1693/2024

IN THE MATTER OF:

Sh. Amit Kumar Malik

... **Applicant/Petitioner**

Versus

M/s. Kindle Developers Pvt. Ltd.

... **Respondent**

Under Section: 7 of IBC, 2016

Order delivered on 29.04.2024

CORAM:

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

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

PRESENT:

For the Applicant : Adv. Rishi Kapoor, Adv. Deboleena Dutta, Adv. Sanket Gupta in IA-6421/2023

For the Respondent : Adv. Ruchira Gupta, Adv. Pooja Tripathi for R-14 in IA -3750/2020, Adv. Karan Luthra, Adv. Aarushi Tiku in I.A.-3053/2020 for R-1 to 4, in I.A.-3750/2020 for R-4 & 30, in I.A.-3202/2020 for R-6 & 8, Adv. Ankit Banati for R-5 in IA-3750/2020 and for R-3 in IA No.2444/2020, Adv. Manish Kaushik, Adv. Mishal Johari & Adv. Harsh Vashisht C for R-7 to 12 in IA No. 3053 of 2020, Adv. K. Sharma, Akash Gupta in IA-2444/2020 for R-5, IA-3053/2020 for R-15, IA-3202/2020 for R-3, IA-3750/2020 for R-25, IA-904/2021 for R-3, IA-4587/2021 for applicant, Adv. Shashank Aggarwal in IA-2444/2020, Adv. Nakul Mohata, Adv. Riya D., Adv. Mayank Sharma in 479/2019

For the Noida Authority : Adv. Rachit Mittal, Adv. Parish Mishra, Adv. Adarsh Srivastava

For the Real Estate Pvt. Ltd. : Adv. Shashank Aggarwal

HYBRID HEARING (PHYSICAL & VC)

ORDER

IA-3192/2023: As can be seen from the averments made in paras 3 to 6 of the application, the non-representation of the Applicant before this Tribunal on 15.05.2023 was on account of lapse on the part of the counsel. The paras reads thus:-

“3. That the main matter along with various IAs was listed on 11.05.2023 for further proceedings. On 11.05.2023, the Hon’ble Adjudicating Authority was pleased to hear arguments at length qua certain applications filed by the NOIDA Authority. However since the arguments could not be concluded qua the said applications, the Hon’ble Adjudicating Authority was pleased to adjourn the matter for arguments qua the NOIDA Authority’s applications. Accordingly, at request of the respective counsels, the Hon’ble Adjudicating Authority listed the matter on 15.05.2023.

4. Moreover, the counsel representing the applicant was indisposed to appear on 15.05.2023 as he was bound to travel outside Delhi due to personal difficulty for which he had made travel arrangements prior to 11.05.2023 itself. Accordingly, the counsel representing the applicant was unable to make appropriate arrangements to appear on 15.05.2023 due to which the said Application was dismissed by this Hon’ble Adjudicating Authority for non-prosecution.

5. It is most humbly submitted and prayed that the Applicant being an innocent party shall not be made to suffer on account of bona fide error committed on the part of his advocate who inadvertently misconstrued and misinterpreted the directions passed by this Hon’ble Adjudicating Authority on 11.05.2023 and was under a bona fide impression that the said Application would not be taken up by the Ld. Adjudicating Authority on 15.05.2023.

6. It is submitted that the non-representation by the counsel was neither willful, nor wanton but solely due to reasons as aforementioned.”

It is stare decisis that a party to litigation should not suffer on account of lapse on the part of counsel. In the wake, in view of the averments made therein the **IA is allowed** and the order dated 15.05.2023 passed in IA-440/2023 is recalled. Ergo, the IA-440/2023 stands restored to its original position.

For last half an hour, we are asking the Counsels for the parties that exactly on what date the settlement between the Financial Creditor and the Corporate Debtor could take place. We are unable to find any such date from any of the Ld.

Counsels. Nevertheless, in the order dated 09.07.2018 passed by this Tribunal creates a semblance that the settlement could take place after admission of the application, as the order refers to moratorium. Nevertheless, list the matter for further hearing tomorrow on the top of Board.

List on 30.04.2024.

IA/904/2021, IA-6421/2023, CA-1654/2019, CA-479/2019,
IA/3750/2020, IA/3053/2020, IA/2444/2020, IA/3202/2020, CA-
1664/2019, IA- 1693/2024: List on 30.04.2024.

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

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