

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

I.A. (C.A.) No. 18/KB/2024

In

Rst.A (Companies Act) No. 11/KB/2023

In

Rst.A (Companies Act) No. 3/KB/2023

In

TP/8 (KB)/2022

***An Application under Rule 11 of the NCLT Rules, 2016 read
with Section 5 of the Limitation Act, 1963.***

And

Rst.A (Companies Act) No. 11/KB/2023

In

Rst.A (Companies Act) No. 3/KB/2023

In

I.A. (Companies Act) No. 64 (KB) 2023

In

TP/8 (KB)/2022

***An Application under Rule 48 read with Rule 11 of the
National Company Law Tribunal Rules, 2016.***

IN THE MATTER OF:

Metaflux Company Private Limited

... Operational Creditor/Petitioner/ Applicant.

Versus

Shree Padmawati Metaliks Private Limited

... Corporate Debtor/ Respondent.

Date of Pronouncement: April 26, 2024.

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TP/8 (KB)/2022

CORAM:

SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)
SHRI. D. ARVIND, HON'BLE MEMBER (TECHNICAL)

Appearance:

Mr. Malay Kr. Das, Adv.] for the Petitioner

Mr. D. Basu, Adv.] for the Respondent

Ms. Urmila Chakraborty, Adv.

Ms. S. Basu, Adv.

ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. The Court congregated through a hybrid mode.
2. We have heard the Ld. Counsels for the parties in both the matters.

I.A. (C.A.) No. 18/KB/2024

3. This application has been preferred by the Metaflux Company Private Limited, hereinafter referred to as "Applicant" under Rule 11 of the National Company Law Tribunal Rules, 2016, for brevity "NCLT Rules" read with Section 5 of the Limitation ACT 1963 which seeking following reliefs:
 - a. *To condone the delay and recall the order dated 10th October 2023 passed in Rest. A (CA)/3(KB)/2023 as well as order dated 13th December 2022 and heard on merits in the interest of the justice and equity.*
 - b. *Pass such other or further order as be deemed fit and proper.*

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Rst.A (Companies Act) No. 11/KB/2023

4. This application has been preferred by the Metaflux Company Private Limited, hereinafter referred to as “Applicant” under Rule 48 read with rule 11 of the National Company Law Tribunal Rules, 2016, for brevity “NCLT Rules” seeking following reliefs:

- a. *To allow and recall the order dated 10th October, 2023 passed in Restoration Application (Companies Act)/3 (KB) of 2023 along with I.A. No. (CA)/64(KB) of 2023 and thereby restore TP/8(KB)/2022 and to heard on merits in the interest of the justice and equity.*
- b. *Pass such other or further order as may be deemed fit and proper.*

Facts in nutshell:

5. The company petition being C.P. No. 563 of 2013 for winding up preferred before the Hon’ble High Court at Calcutta under sections 433, 434, and 439 of the Companies Act, 1956, was directed to transfer to this Adjudicating Authority on 10.09.2021. Accordingly, a transfer petition being TP/8(KB)/2022 was preferred by the party to this Adjudicating Authority.

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6. The matter was listed and adjourned on several occasions from 25.03.2022 to 12.07.2022 by this Adjudicating authority. On 30.08.2022 a direction has been passed by this Adjudicating Authority that a petition be made IBC complaint by issuing a notice under section 8 of the Insolvency and Bankruptcy Code, 2016. Further on 20.10.2022 the hearing of the matter was adjourned due to non-appearance of the applicant.

Submission made by the Petitioner :

7. The Learned Counsel for the petitioner seeks restoration on the following ground as mentioned in both the applications such as
- a) Mr. Arun Deb Mukherjee, Ld. Counsel for the applicant was suffering from post-covid complexities and advised by doctor to rest.
 - b) Further, the Ld. Counsel for the applicant could not appear on 10.10.2023 as he had gone to the hospital for taking necessary vaccination for a cat bite in the hand.
8. That vide an order dated 13.12.2022, the petition was dismissed for non-prosecution. A restoration application was preferred on 19.02.2023 being Rest.A 3(KB)/2023 which along with an I.A. being No. 64(KB) /2023 were also dismissed for the non-prosecution.
9. On 27.11.2023, another restoration application being Rst.A (C.A.) No. 11/KB/2023 to restore the transfer petition being

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TP/8/(KB)/2022 and further, on 25.01.2024, an I.A. being No. 18(KB)/2014 to condone the delay and to recall the order dated 10.10.2023, have been preferred before us.

Analysis and findings

- 10.** We have heard the Ld. Counsels appearing in this matter and perused the records.

- 11.** It would be evident that this Restoration Application being No. 11(KB)/2023 for the restoring the main Transfer Petition being No. 8(KB)/2022, has been preferred on 27.11.2023 and Further I.A 18/KB/2023 for condonation of delay has been preferred on 25.01.2024.

- 12.** It would further be evident that vide an order dated 10.10.2023 we have dismissed the applications Rst.A (Companies Act)/3(KB)/2023 as well as I.A(Companies Act)/64(KB)/2023 which were sought for condonation of delay. The reasons for dismissal of those applications, we had noted that:

Ld. Counsel for the Corporate Debtor was present, but none stood up so far on behalf of the petitioners despite notice and dismissed the applications.

- 13.** We are conscious of the legal position as enshrined in the **Rule 48 of the National Company Law Tribunal Rules, 2016** that:

“Consequence of non-appearance of applicant.-

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(1) Where on the date fixed for hearing of the petition or application or on any other date to which such hearing may be adjourned, the applicant does not appear when the petition or the application is called for hearing, the Tribunal may, in its discretion, either dismiss the application for default or hear and decide it on merit.

*(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 cause for his non-appearance** when the petition or the application was called for hearing, the Tribunal shall make an order restoring the same: Provided that where the case was disposed of on merits the decision shall not be re-opened.”*

14. Thus, this restoration Application being No. 11(KB)/2023, should have been filed within 30 days from the date of dismissal, that i.e., within 10.11.2023. However, the same has been preferred on 27.11.2023, after a delay of 17 days in terms of Rule 48 of the NCLT Rules, 2016.

15. Further, we have found that the petitioner by preferring an IA being No. 18/KB/2023, has sought for condonation of delay and the reason of seeking condonation is not satisfactory.

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- 16.** Further we have noted that previously we have given plethora of opportunity to move the main petition, which the petitioner failed to avail.
- 17.** Hence, we are of the considered opinion that both the applications deserve to be dismissed and rejected. Hence this **I.A. (C.A.) No. 18/KB/2024 and Rst. A (Companies Act) No. 11/KB/2023** are dismissed.
- 18.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

This Order is signed on 26th Day of April 2024.

Tiwari, V. [LRA]/ Bose, R. K. [LRA]