

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-II)
KOLKATA**

RST.APPLICATION No.1 /KB/2022

In

C.P. No. 759/KB/2020

An application Under Rules 11,48 and 51 of the National Company Law Tribunal Rule, 2016.

In the Matter of:

Amit Kumar Ghidia & Anr.

....Petitioners

-versus-

Shrawasthi Agrotech Private Limited & Ors.

.... Respondents

Date of Hearing : 21/09/2022

Date of pronouncing the order:26/09/2022

Coram:

Mr. Rohit Kapoor, Member (Judicial)

Mr. Balraj Joshi, Member (Technical)

Appearances (via Video Conferencing/ Physical):

Mr. Ratnanko Banerjee, Sr. Adv. : For Applicant in RST.A/1/2022

Mr.D.N.Sharma,Adv. :

Mr.Nirmalya Dasgupta,Adv. :

Mr.Rahul Sharma,Adv. :

Mr.Abhrajit Mitra, Sr. Adv. : For Respondent No.4

Ms. Manju Bhuteria, Adv. :

Mr.Uttam Sharma, Adv. :

ORDER

PER: Rohit Kapoor, Member (Judicial):

1. This Court convened through video conferencing.
2. This application has been filed on 23/04/2022 seeking restoration of C.P No. 759/KB/2020 dismissed for non-prosecution on 19th April, 2022.
3. Ld. Counsel appearing for the petitioners while seeking the relief has drawn our attention to paragraphs 5,6,7,8,9 and 10 of the application while making his submissions for seeking restoration of CP, which was dismissed for non-prosecution.
4. Before proceeding further relevant extract or order dated 19th April, 2022 passed by this Adjudicating Authority is reproduced as under:-

“ 2 There has been no representation in the matter on behalf of the behalf of the Petitioner when the matter called for on 08/04/2021, 13/08/2021, 05/10/2021, 18/11/2021, 10/02/2022 and even today i.e. 19/04/2022. It appears that the Petitioners are not interested in pursuing the present petition. Hence the petition is dismissed for non prosecution.”

5. Reply affidavit has been filed by Respondents thereby raising objections to the application seeking restoration of CP dismissed for non-prosecution as mentioned above.
6. During the course of submissions, our attention has been drawn to Annexure-E at page 63 of the objections with a view to show that counsel for the petitioners was appearing before the Hon'ble High Court on 7th April, 2021 and therefore, contentions of the applicant that the Vakalatnama which was to be filed after having obtained

NOC on 8th April,2021 from the erstwhile authorised representative was misplaced and therefore duly engaged advocate who was to represent the petitioners in the present Company Petition could not file Vakalatnama and therefore the presence of the petitioners was not recorded on 5th October, 2021, 18th November,2021 and February 10, 2022 in the main Company Petition.

7. It is contended by the Ld. Senior Counsel appearing for the Respondents that the contention of the petitioners is incorrect, in view of the fact that the applicant was duly represented by a counsel on 7th April, 2021 before the Hon'ble High Court in ***FMAT 166 of 2021 With CAN 1 of 2021, Titled as Amit Kumar Ghidia & Ors Vs. Eva Exotica Pvt.Ltd.*** The plea regarding Vakalatnama is, therefore, incorrect on the face of it and merely an afterthought to file the present application.
8. Heard the Ld. Counsel for the parties and perused the record.
9. It is evident from the order dated 19th April,2022 passed by this Adjudicating Authority, the petitioners failed to appear repeatedly and continuously on six dates of hearing spread over period of one year and in view of this, the Adjudicating Authority dismissed the CP for non-prosecution.
10. Though, this application was filed on 23rd April,2022, but we are of the view that petitioners has not come with clean hands to seek the restoration as his own stand contradicts the plea of not having Vakalatnama in view of the appearance on his behalf before the Hon'ble High Court.

11. Further this Adjudicating Authority passed the order of dismissal for non-prosecution after waiting for more than six hearing for appearance of the petitioners over a period of one year.
12. We find that there is nothing to support the averments contains in Paras 5 to 9 of the application seeking restoration for the reasons mentioned therein. We do not find any sufficient cause or diligence shown by the petitioners particularly in the context of not appearing continuously for six dates of hearing. Further the fact that the counsel for the petitioners was appearing before the Hon'ble High Court and there is no explanation as what prevented the petitioners from appearing in the C.P.
13. For the reasons stated hereinabove, we are of the view that the contentions of the petitioners are bereft of any sufficient cause or bonafide reason for not appearing for six consecutive dates, we hereby dismiss this IA.
14. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

(Balraj Joshi)
Member (Technical)

(Rohit Kapoor)
Member (Judicial)

Order signed on, this 26th day of September, 2022

PJ