

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

ITEM No.303
RST.A/8(AHM)2024
in
CP(IB)/73(AHM)2024

Order under Section Rule 11 & 48 of NCLT Rules, 2016

IN THE MATTER OF:

PHENIX BUILDING SOLUTIONS PRIVATE LIMITED
Vs
MASCOT SURYAPUR LLP.

.....Applicant

.....Respondent

Order delivered on 03/05/2024

Coram:

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

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

-Sd-
SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-
SHAMMI KHAN
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH -I, AHMEDABAD**

**Rest. A/08(AHM)2024
in
CP(IB)/73(AHM)/2024**

[An application filed under Rule 11 and 48 of NCLT Rules, 2016]

Phenix Building Solutions Private Limited
Through its Sr. Manager and authorized
signatory Dharmendra Bagbai S/o Haldhar Bagbai
Having Registered Office at:
MB House, 51 Chandroday Society
Stadium Road, Ahmedabad-380014.

....Applicant/OC

VERSUS

Mascot Suryapur LLP
Having its Registered Office at:
Block No. 86B, Resi: Puna
Gam Village Makhinga,
Taluka Palsana, Surat,
Gujarat 394315.

....Respondent/CD

Order Pronounced On: 03.05.2024

CORAM:

**SH. SHAMMI KHAN, MEMBER (JUDICIAL)
SH. SAMEER KAKAR, MEMBER (TECHNICAL)**

APPEARANCE:

For Applicant(s) : Ms. Tanaya Shah, Ld. Adv.

O R D E R
[Per: Bench]

Rest. A/08(AHM)2024

1. This is an application filed by the Applicant under Rule 11 and 48 of NCLT Rules, 2016 seeking the following prayers:-
 - a. *This Tribunal may be pleased to allow this Application and thereby restore the Company Petition (IB) No. 73 of 2024 on file of this Hon'ble Court to be heard on merits in the interest of justice and equity, and*
 - b. *Pass such other or further orders as this Tribunal may deem fit and proper under the facts and circumstances of the present case and in the interest of justice and equity.*

2. It is stated that the Applicant had filed C.P. (IB) No.73 of 2024 on 06.02.2024 before this Hon'ble Tribunal under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter "Code") for the purpose of initiating corporate insolvency resolution process (hereinafter "CIRP") against the Respondent - Corporate Debtor.

3. The Applicant's sister concern M&B Engineering Ltd. (through its division Phenix Infra) also simultaneously filed on 06.02.2024 an application before this Hon'ble Tribunal bearing diary no. 2401105/00429/2024 under Section 9 of the Code for the purpose of initiating CIRP against the Respondent - Corporate Debtor. A copy of e-filing receipt of C.P. (IB) No. 73 of 2024 and application bearing diary no. 2401105/00429/ 2024 is annexed hereto and marked **Annexure B colly**. Both the aforesaid matters arise out of the same project /transaction and are against the same Corporate Debtor.

4. The Applicant's advocate remained under a bona fide impression that both the aforesaid matters are before the scrutiny department of this Hon'ble Tribunal's registry and office objections would be raised in the matters. Office objections were raised on 13.02.2024 in the application bearing filing no. 2401105/00429/2024 filed by the Applicant's sister concern. No office objections were received in C.P. (IB) No. 73 of 2024. It is submitted that the Applicant's advocate was under a bonafide belief

that both the aforesaid matters would be listed together once office objections are removed.

5. The captioned C.P. (IB) No. 73 of 2024 was freshly listed before this Hon'ble Tribunal at sr. no. 1 on 14.02.2024. A copy of cause list of this Hon'ble Tribunal dated 14.02.2024 as downloaded from the website is annexed hereto and marked **Annexure C**.
6. It is submitted that while the Applicant's advocate usually receives an automated message in the morning of listing of her matters before the Hon'ble NCLT, Ahmedabad, the Applicant's advocate did not receive a text message regarding listing of C.P. (IB) No. 73 of 2024 on the morning of 14.02.2024.
7. Owing to an inadvertent and bona fide lapse, the applicant's above could not remain present before this Hon'ble Tribunal when the matter was called out on 14.02.2024 as the Applicant's advocate remained unaware of listing.

8. It is submitted that the Applicant's advocate was informed by her colleagues regarding dismissal of the matter by this Hon'ble Tribunal later in the day. The Applicant thereafter immediately tried to log in through the Video Conferencing Platform before this Hon'ble Tribunal. However, due to technical glitch the Applicant's advocate was unable to do so.
9. Resultantly, the freshly listed C.P. (IB) No. 73 of 2024 came to be dismissed for default vide order dated 14.02.2024 passed by this Hon'ble Court. It is submitted that the same has happened due to an inadvertent error on the part of the Advocate and tenders unconditional apology for the same.
10. It is submitted that the Applicant is interested in proceeding with the matter and is ready and willing to proceed with the same on any date fixed by this Hon'ble Tribunal. Hence in the interest of justice it is humbly prayed that C.P. (IB) No.73 of 2024 be restored.

11. It is submitted that the non-representation by the Counsel for the Applicant was not willful, but solely due to inadvertence and later on connectivity/technical issues.
12. It is submitted that the Applicant/ Operational Creditor will be put to irreparable loss and hardship if the order dated 14.02.2024 is not reopened and if the Company Petition (IB) No.73 of 2024 is not restored.
13. We have heard the counsel for the Applicant and have perused the documents.
14. The order dated 14.02.2024 passed by this tribunal in CP (IB) No.73 of 2024 is self-explanatory which is reproduced here under:-

“This is an application filed under Section 9 of the Insolvency & Bankruptcy Code, 2016.

When the matter was called out in the first session, none appeared on behalf of the applicant. Hence, the matter was passed over.

Now, again, the matter was called out in the second session in post lunch.

However, again no one has also appeared on behalf of the applicant to press this Application. It seems that, Counsel for the applicant has lost interest in pursuing this application.

On perusal of the petition and documents annexed therein, reflects that the statutory demand notice issued under Section 8 of the IBC, 2016 was admittedly not served upon the Respondent/Corporate Debtor, through registered post on registered address as per the MCA data, as the respondent / corporate debtor has left the place and some other company is operating from that address. Therefore, the present petition is pre-mature and defective in terms of Section 9(3).

*Accordingly, **CP(IB)/73(AHM)2024** is dismissed being defective.”*

15. It is seen that the order dated 14.02.2024 is a reasoned order through which CP(IB) No.73 of 2024 was not dismissed in default. Rather, it was dismissed being pre-mature and defective in terms of Section 9(3) of the IBC, 2016.

16. However, the Applicant instead of challenging the impugned order has come before us with a request to recall the order of dismissed for default and to restore CP(IB) No.73 of 2024 on file of this Tribunal to be heard on merits.
17. In our view, the contentions of the Applicant are misplaced and sans merit as CP(IB) No.73 of 2024 was not dismissed in default rather it was dismissed on merit after considering the pleadings being pre-mature and defective in terms of Section 9(3) of the IBC, 2016. Hence, the restoration application is not maintainable.
18. Accordingly, **Rest. A/8(AHM) 2024** filed in CP(IB) No.73 of 2024 is hereby dismissed.
19. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

-Sd-
SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-
SHAMMI KHAN
MEMBER (JUDICIAL)