NATIONAL COMPANY LAW TRIBUNAL
COURT ROOM NO. 1,
MUMBAI BENCH

Item No. 11

IA 1560/2024 (NEW IA) in C.P. (IB)/4288(MB)2019

CORAM:

SH. PRABHAT KUMAR **JUSTICE VIRENDRASINGH BISHT (Retd.)**
HON'BLE MEMBER (TECHNICAL) **HON'BLE MEMBER (JUDICIAL)**

ORDER SHEET OF THE HEARING ON **08.04.2024**

NAME OF THE PARTIES: **M M ENTERPRISES VS WHITE ROSE PROPERTIES PRIVATE LIMITED**

Section 9 of the Insolvency and Bankruptcy Code, 2016 and Rule 11

ORDER

IA 1560/2024 (NEW IA) in C.P. (IB)/4288(MB)2019

1) Ms. Geeta Lundwani, Ld. Counsel for the Applicant is present.

2) The present Restoration Application has been filed by the Applicant/Operational Creditor, M M Enterprises seeking relief to set aside the dismissal order dated 27.10.2023 passed by this Bench on account of non-appearance of Counsel/Petitioner during the course of hearing and further seeks restoration of the main Company Petition bearing CP (IB) No. 4288 of 2019.

3) It is submitted that the said Company Petition was listed on board time to time and on 04.09.2023 the same was attended by the Counsel for Petitioner. This submission of the Counsel for the Petitioner found substantiated after

referring to the order of this Bench dt. 04.09.2023, on which date, it was recorded that ***"Ms. Smita Shah, Ld. Counsel for the Operational Creditor and Mr. Sanjay Dubey, Ld. Counsel for the Corporate Debtor are present"***.

4) Thereafter, the matter was listed on Board on 27.10.2023, and considering the virtual vc link on cause list the Counsel for Applicant had done the login online, but was not admitted and later by the time counsel reached the court room for physical appearance the matter was already called out and associated directed to check the date online.

5) Further, it is also submitted that the non-appearance on previous two occasion i.e. 04.10.2023 and 27.10.2023 by the Counsel/Advocate for Applicant was unintentional and was not deliberated. It is further averred that the Applicant states that Applicant has good case on merit and deserves an opportunity of hearing. The dismissal of the subject Petition is causing grave prejudice to the Applicant herein which cannot be compensated in term of money.

6) It is further submitted that the Company Petition bearing CP (IB) No. 4288 of 2019, was listed on Board on 27.10.2023, on which date, the Company Petition was dismissed for want of prosecution. The Order dt. 27.10.2023, is quoted below for the convenience.

"1. None present on behalf of either sides even after the matter called twice.

2. Ongoing through the records, it is observed that there is no representation on behalf of the Petitioner on 04.10.2023. Today also no representation on behalf of the Petitioner. It seems that the Petitioner is deliberately trying to prolong the matter and not interested to pursue his case.

3. Accordingly, this Bench takes a serious note on the conduct of the Petitioner and dismiss the CP 4288/2019 on account of non-prosecution".

7) Hence the present Interlocutory Application has been filed for restoration of the Company Petition bearing CP (IB) No. 4288 of 2019.

8) Having considered the submissions and also taking note of the facts and circumstances, this Bench deems it fit and appropriate to allow the present Interlocutory Application bearing IA No. 1560 of 2024. Accordingly, this Bench allows the present Interlocutory Application thereby restoring the main Company Petition on the file of the Court Room No. 1, National Company Law Tribunal, Mumbai Bench.

9) It is to be noted that the main Company Petition bearing **CP (IB) No. 4288 of 2019**, is now being ordered to be restored on the file of **Court Room No. 1, National Company Law Tribunal, Mumbai Bench**; hence, Registry shall expedite all the necessary steps regarding restoration of the main Company Petition. Registry is further directed to list the main Company Petition on Board on **30.04.2024**, for further consideration and hearing.

10) Petitioner herein is directed to issue Notice to the Corporate Debtor clearly intimating the next date of hearing by all available means (i.e. Speed Post, E-mail, etc.) and to place on record Affidavit of Service well before the adjourned date.

11) Needless to say, Corporate Debtor shall file and place on record Affidavit in Reply, if any new facts has been brought on record, well before the adjourned date by duly serving a copy to the other side well in advance.

12) With the aforesaid observations and directions, the Interlocutory Application bearing **IA No. 1560 of 2024**, is disposed of.

13) There would however be no order as to costs. Ordered Accordingly.

Sd/- **Sd/-**

PRABHAT KUMAR
MEMBER (TECHNICAL)

JUSTICE VIRENDRASINGH BISHT
MEMBER (JUDICIAL)

Vedant Kedare