

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH – II, CHENNAI
Restoration Application/14(CHE) 2023
IN
IA1018/2020
IN
CP/941/IB/2018
In the matter of M/s GVR Infra Projects Limited

GVR Infra Projects Limited,
Having its registered office at 10th Floor,
No. 47 & 49, Barullah Road, T. Nagar, Chennai – 600 017

... Applicant/Respondent No.1

Versus

1. Ms. Vandana Garg
Monitoring Agent - GVR Infra Projects Limited (Corporate Debtor)
Having Office at 307, 3rd floor,
Exgellencia Lodha Supremus 2,
Wagle Estate, Panchppakhadi, Thane - 400 604

... Respondent No.1/Applicant

2. Project Director,
Bhabha Atomic Research Centre,
BARC Facilities, Block 'B'4" Cross,
Autonagar, Visakhapatnam - 530 012

... Respondent No.2/Respondent No.2

3. Chief Engineer,
ESG, IGCAR & GSO,
Department of Atomic Energy, Kalpakkam - 603 102

... Respondent No.3/Respondent No.3

4. State Bank of India,
Industrial Finance Branch 155,
Anna Salai, Chennai - 600 002

... Respondent No.4/ Respondent No.4

5. IDBI Bank Limited,
115, Anna Salai, PB No. 805,
Saidapet, Chennai - 600 015

... Respondent No.5/Respondent No.5

6. UV Asset Reconstruction Company Limited,
704, 7th Floor, Deepali Building, 92,
Nehru Place, New Delhi - 110 019

... Respondent No.6/Respondent No.6

CORAM

SHRI. JYOTI KUMAR TRIPATHI, MEMBER (JUDICIAL)
SHRI. RAVICHANDRAN RAMASAMY, MEMBER (TECHNICAL)

Present:

For Applicant: Mr. Viswanathan M S, Advocate

Order Pronounced on 03rd May 2024

ORDER

1. This Application is filed under Rule 11 and Rule 48 of National Company law Tribunal Rules, 2016 (Hereinafter "NCLT Rules) is submitted by the Applicant GVR Infra Projects Limited i.e. Corporate debtor.
2. The Applicant Corporate Debtor has filed this application seeking the following reliefs,

i) Application in IA/1018/IB/2018 in CP/941/IB/2018 filed by the 1st Respondent be restored by this Tribunal based on the significant prejudice caused to the Applicant herein, due to dismissal the said Application owing to the non-prosecution by the 1st Respondent and consequently to extend the order dated 18th December 2020.

ii) To condone the delay of 26 days in filing the present application.

BRIEF FACTS

3. The applicant submits that the present application is filed to restore

IA/1018/IB/2018 in CP/941/IB/2018 which was filed by 1st Respondent herein and the applicant in IA/1018/2018, as the dismissal of the application has caused prejudice and detriment. The applicant submitted that IA/1018/IB/2018 in CP/941/IB/2018 was filed by the 1st Respondent herein as the Monitoring Agent of the Corporate Debtor under section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as 'Code') to seek ad-interim as well as permanent injunction against the 2nd Respondent herein, from the invocation of bank guarantees under contract dated 27th June, 2013 with the Corporate Debtor, and a declaration that the 2nd Respondent and the 3rd Respondent herein cannot raise any claims against the Corporate debtor for the period before the commencement of the corporate insolvency resolution process.

4. The Applicant herein further states that they are constrained to move the present application IA/1018/IB/2018 in CP/941/IB/2018 filed by the 1st Respondent herein before this Tribunal as it was dismissed on the ground of non-prosecution on 03.02.2023.
5. The applicant submits that it has caused severe prejudice to the applicant as the order dated 18.12.2020 stands vacated, the interim protection granted by this tribunal against the encashment of bank guarantees also stands vacated.
6. The applicant states that 1st respondent herein had failed to appear before this Tribunal and therefore vide order dated 03.02.2023 this tribunal

dismissed IA/1018/IB/2018 in CP/941/IB/2018 for “Non prosecution” which was filed by 1st respondent herein and applicant in the IA/1018/IB/2018.

7. The Applicant submits that if the funds that are to be infused by Applicant herein are to be utilized towards the illegal claims of the 2nd Respondent herein, then the implementation of the approved resolution plan would be affected adversely and cause great prejudice to the Applicant herein.
8. Henceforth the Applicant has prayed for restoring and hearing of IA/1018/IB/2018 in CP/941/IB/2018.
9. The Applicant was directed to serve copy of this application on the Respondents vide order dated 31.03.2023 and an AoS to that effect has been filed. Further this Tribunal vide order dated 09.05.2023 directed the applicant to serve notice on R1 and same was complied. R4 has filed their reply and submitted that they are the formal parties and cannot comment on the merits of the case.
10. We have heard the Ld. Counsel of the parties and perused the records.

FINDINGS

11. This Restoration Application has been filed seeking relief to restore IA/1018/IB/2020 moved in CP//941/IB/2018, in the matter of M/s. GVR Infra Projects Limited which was filed by the 1st Respondent, namely, Ms. Vandana Garg, Monitoring Agent, M/s. GVR Infra Projects Limited (CD). The present application is filed by 1st Respondent in IA/1018/IB/2020 and applicant herein for restoration of the said IA along with condo nation

of delay for a period of 26-days in filing the present application.

12. In this matter, the application has been filed by the Applicant/ Respondent in IA/1018/IB/2020, under Rule 11, 48 of NCLT Rules, 2016 and other provisions of IBC, 2016. For ready reference, it would be appropriate to mention here the provisions of Rule 11 and Rule 48 of NCLT Rules, 2016;-

“Rule 11. Inherent Powers:

“Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal.”

Rule 48. Consequence of non-appearance of applicant:

(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.”

13. As per the provisions enumerated under Rule 11, Tribunal is vested with inherent powers to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of process of the law. The Court of law or Tribunal may use its inherent power only in that case where no specific

provision regarding the matters has been enumerated in any Rule of Law. So far as this matter is concerned, Rule 48 as mentioned (supra) enumerates that when an Applicant has defaulted in appearing before the Tribunal and the case has been dismissed for default, as per the Rule 48(2) if the Applicant files an application within 30-days from the date of dismissal and satisfy the Tribunal that there are sufficient causes for his non-appearance when the Petition or the application was called for hearing, the Tribunal shall make order to restore the same. From the provisions of Rule 48, it is clear that the Rule to restore the application is on the behest of the Applicant itself. Rule 48 is a clear provision for restoring the application on consequence of non-appearance of the applicant.

14. The applicant has sought for delay condonation in the present application for 26 days. The restoration of the application is discretion of this tribunal based on the satisfaction of the provisions under Rule 48(2) in relation to filing of the said application within the period of 30 days, which becomes a 'sine qua' condition-precedent, for filing of an application for restoration. However, in the present case, the application has been filed on 30.03.2023, whereas the order of this Tribunal was passed on 03.02.2023 i.e. much beyond the period prescribed under Rule 48(2). There is no application for seeking any condonation of delay for the period beyond 30 days giving adequate and sufficient reasons for not being able to file the application within the prescribed limit of 30 days. In such absence, being any

application for condoning the delay, we are of the opinion that the conditions as prescribed under Rule 48 are not satisfied relating to the time period of 30 days prescribed for filing the application for restoration.

15. Now the question arises further that whether the Applicant who was the Respondent No.1 in IA/1018/IB/2020 has *locus standi* to get it restored. The Rule 48 clearly states only the Applicant may move for restoration. In this matter, the Applicant, M/s. GVR Infra Projects Limited had been Respondent No.1 in IA/1018/IB/2020. As per the provision, the Respondent cannot move an application under Rule 48 of NCLT Rules, 2016. In this matter, the main application (IA/1018/2018) of the 1st Respondent herein has been dismissed for default and not on merit. The Applicant, Ms. Vandana Garg, Monitoring Agent who is the Applicant herein and 1st Respondent therein (IA/1018/2018) has no "*locus standi*" to move the Restoration Application as per provision of Rule 48 of NCLT Rules, 2016.

16. It would be pertinent to mention here that as per the provision mentioned in Rule 48(2), when an application has been dismissed for default and the Applicant files an application within 30-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 for restoring the same. Thus the provision clearly mentions that where the date fixed for hearing of the petition or the application or any other date to which the hearing may be adjourned, the

Applicant has to give satisfactory reasons and sufficient cause for his non-appearance on that date of hearing. The Applicant has to give sufficient cause based on the judgment of "*Nathu Prasad V. Singhai Kapurchand 1976 AIR (MP) 136.*"

17. In "*Neerja Realtors Private Limited V. Janglu (dead) through legal representative (2018)*" it was ruled that, In order to succeed in the proceeding, the petitioner has to satisfy the court that they were prevented by sufficient cause from appearing on the date of application when it was called for the hearing. In the present application the sufficient cause is not met out to satisfy this Tribunal on restoration of the dismissed application IA/1018/IB/2018.

18. For the reasons stated above we are of the opinion that Applicant being one of Respondent in the dismissed IA/1018/IB/2018 and have no *locus standi* to file this Restoration application/14(CHE)/2023. We do not find any reasons to allow this restoration application.

19. Accordingly, Restoration application/14(CHE) 2023 in IA 1018/2020 stands dismissed and the applicant is given liberty to move fresh application in case of facing any grievance by the acts of Respondents.

-Sd/-

RAVICHANDRAN RAMASAMY
MEMBER (TECHNICAL)

-Sd/-

JYOTI KUMAR TRIPATHI
MEMBER (JUDICIAL)