

**NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH  
COURT HALL NO: II**

**Hearing Through: VC and Physical (Hybrid) Mode**

**CORAM: SHRI. RAJEEV BHARDWAJ, HON'BLE MEMBER (J)**

**CORAM: SHRI. SANJAY PURI, - HON'BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,  
HYDERABAD BENCH, HELD ON 24.04.2024 AT 10:30 AM**

<b>TRANSFER PETITION NO.</b>	
<b>COMPANY PETITION/APPLICATION NO.</b>	<b>IA (IBC)/97/2024 in Company Petition IB/308/2022</b>
<b>NAME OF THE COMPANY</b>	<b>Gayatri Projects Ltd</b>
<b>NAME OF THE PETITIONER(S)</b>	<b>State Bank of India</b>
<b>NAME OF THE RESPONDENT(S)</b>	<b>Gayatri Projects Ltd</b>
<b>UNDER SECTION</b>	<b>7 of IBC</b>

**ORDER**

**IA (IBC)/97/2024**

Orders pronounced, recorded vide separate sheets. In the result, this application is dismissed.

**Sd/-**  
**MEMBER (T)**

**Sd/-**  
**MEMBER (J)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH-II**

**IA.No.97 of 2024 in IA (IBC) No.1311 of 2023 in  
IA (IBC) No.880/2023 in CP (IB) No.308/7/HDB/2022**

**[Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016]**

**Between:**

Assistant Commissioner of Income Tax  
Circle – (1), Hyderabad.

**... Applicant**

**Versus**

M/s.Gayatri Projects Limited  
6-3-1090 TSR Towers, Rajbhavan Road, Somajiguda  
Hyderabad-500082 (Telangana)

**...Respondent/Resolution Professional**

**Date:24.04.2024**

**Counsel/Parties present:**

For the Applicant : Mrs. B. Sapna Reddy, Advocate  
For the Respondent : Mr. Sai Ramesh Kanuparthi, RP.

**Per: Rajeev Bhardwaj, Member (Judicial)**

**ORDER**

1. The instant Application has been filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 by the Applicant seeking the following reliefs:
  - i. Set aside the ex-parte order dated 10.10.2023 and condone the delay in filing the counter in IA.No.1311 of 2023 in IA.No.880 of 2023;
  - ii. Permit the Applicant to file Vakalatnama and Counter and adduce arguments in IA.No.1311 of 2023 in IA.No.880 of 2023.
  
2. The brief facts, necessary to dispose of the present application, as stated, are that:

**Date:24.04.2024**

- 2.1 The case of the Applicant is that CP IB.No.308/7/HDB/2022 filed by the State Bank of India filed under Section 7 of the IBC was admitted vide order dated 15.11.2022.
  - 2.2 The Respondent, Resolution Professional of the Corporate Debtor, filed an IA No.880/2023 seeking directions to the present Applicant to refund a sum of Rs.56,54,62,472/- to the Corporate Debtor and which was allowed vide order dated 12.07.2023.
  - 2.3 Subsequently, the IRP filed another IA No.1311/2023 for the refund of Rs.71,30,66,160/- for the AY 2022-23 and vide order dated 10.10.2023, the Applicant was directed for refund of Rs.83,10,59,850/-.
  - 2.4 It is claimed that the Applicant came to know about the order in IA No.1311/2023 when M/s. Gayatri Projects intimated it on 16.10.2023.
  - 2.5 In between 15.07.2023 to 01.09.2023, the Applicant was in training at Nagpur and was not aware of the proceedings pending before this Authority.
  - 2.6 In these circumstances, it is submitted that the ex-parte order dated 10.10.2023 be set aside and the Applicant be allowed to file the counter.
3. The case of the Respondent is that the IA No.880/2023 was filed seeking the refund of Rs.83,12,59,850/- for the AYs 2021-2022 and 2022-2023. The Applicant was proceeded ex-parte vide order dated 23.06.2023. The IA was allowed vide order dated 12.07.2023.

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- 3.1 The IA 1311/2023 was filed for rectification of certain typographical errors in the order dated 12.07.2023 in IA No.880/2023 and in that application the Applicant was not a party. Therefore, there does not arise a question of setting the Applicant ex-parte.
- 3.2 The impugned order dated 12.07.2023 was passed before the Applicant was in training and even otherwise it cannot be taken that there was nobody to look after his work in his absence. Therefore, there is delay of 73 days in filing of the present application.
4. We have heard both the Learned Counsels and have also gone through the entire records.
5. The State Bank of India filed CP IB No.308/7/HDB/2022 under Section 7 of the IBC against M/s. Gayatri Projects Limited, which was admitted vide order dated 15.11.2022. The IRP was appointed and he moved an IA No.880/2023 seeking the following Income Tax refunds:

<b>Assessment Year</b>	<b>Refund Amount (Rs)</b>
2021-22	11,81,93,690
2022-23	71,30,66,160
<b>Total</b>	<b>83,12,59,850</b>

6. The Applicant was also party in that application but it was proceeded ex-parte vide order dated on 23.06.2023 (**Page No.10** of the counter).
7. This application was allowed vide order dated 12.07.2023 (**Annexure-C** of the application). The IA 1311/2023 was filed for the rectification of the order dated 12.07.2023 and finally the order was passed on 10.10.2023 (**Annexure-A** of the application).

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8. On the basis of the rectification of the order, the Applicant was directed to refund Rs.83,10,59,850/- pertaining to the AY 2021-22 adjusted against demand of AY 2018-19.
9. From the perusal of the order dated 10.10.2023 in IA 1311/2023 and order dated 12.07.2023 in IA 880/2023, it becomes clear that the Applicant was not directed to issue summons in IA 1311/2023 but only in IA 880/2023 wherein the department was set ex-parte vide order dated 23.06.2023.
10. There is no doubt that this Authority has no power to review its own order but the order can be recalled. The Applicant has sought to recall the ex-parte order dated 10.10.2023 and condone the delay in filing the counter in IA 1311/2023.
11. However, no ex-parte order was passed on 10.10.2023 but it was actually passed on 23.06.2023 in IA 880/2023. When the order is passed under Rule 154 of the NCLT Rules, the order is in continuation of the original order because it relates to only clerical or arithmetical mistake. As such, the Applicant has to get the ex-parte order passed in IA No.880/2023 set aside and until and unless the said order is set aside, no relief can be granted to the Applicant.
12. Accordingly, this application is dismissed.

**Sd/-**  
(SANJAY PURI)  
MEMBER (TECHNICAL)

**Sd/-**  
(RAJEEV BHARDWAJ)  
MEMBER (JUDICIAL)

Apoorva