



**NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH (COURT-I), CHANDIGARH**

RST. A. 16/2024
in
CP(IB) No. 34/Chd/Hry/2023
(Disposed of on 08.07.2024)
Under Section 94 of I.B.C.

IN THE MATTER OF:

Suprio Ghosh

..... Applicant

Versus

Bank Of Maharashtra

..... Respondent

AND

**Under Rule 48(2) read with Rule 11 NCLT
Rules, 2016 and Order IX Rule 9 read with
Section 151 of the CPC, 1908.**

AND IN THE MATTER OF RST. A. 16/2024:

Suprio Ghosh S/o Subroto Ghosh

R/o 815, Badrinath,
Jalvayu Towers, Sector-56, Gurgaon,
Sector 56, Gurgaon, Haryana-122011
EMAIL: suprioghosh@gmail.com

.....Applicant

Versus

Bank Of Maharashtra

Having Its Branch Office At:-
Sushant Lok Branch, Gurgaon, Ground Floor-0 1-02,
B Block, Times Square Building, Sushant Lok-1,
Gurgaon, Haryana.
EMAIL: bom1295@mahabank.co.in

..... Respondent No. 1

Mr. Desh Deepak- Resolution Professional

H. No. 109911, Sector 37B,
Chandigarh- 160036
EMAIL: desbdeepak297@gmail.com

..... Respondent No. 2



Order delivered on: 13.11.2024

Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. UMESH KUMAR SHUKLA, MEMBER (TECHNICAL)

Present:

For the Applicant : Mr. Yashu Rustagi, Advocate
For the Respondent No.1 : Mr. R.S. Bagga, Advocate
For the Respondent No.2 : None

Per: SH. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
SH. UMESH KUMAR SHUKLA, MEMBER(TECHNICAL)

ORDER

This Restoration Application (hereinafter referred to as the “**RST. A.**”) has been filed under Rule 48(2) read with Rule 11 NCLT Rules, 2016 and Order IX Rule 9 read with Section 151 of the CPC, 1908 by Suprio Ghosh (hereinafter referred to as the “**Applicant**”) praying for

- (a) Restoration of CP (IB) No. 34/CHD/HRY/2023 under Section 94 of the Insolvency and Bankruptcy Code, 2016 which was dismissed vide an order dated 08.07.2024 passed by this Adjudicating Authority for want of prosecution and;
- (b) Pass such other or further order /order(s) as may be deemed fit and proper in the facts and circumstances of the instant case.

FACTS OF THE CASE

2 The brief facts, as stated by the Applicant in the RST. A., are as below:

- (i) The Applicant had filed an application bearing CP(IB) No. 34/ CHD/ HRY/ 2023 under Section 94 of the Insolvency and Bankruptcy Code, 2016 for



initiation of insolvency resolution process.

- (ii) This Tribunal vide order dated 17.02.2023 had appointed Mr. Desh Deepak as Resolution Professional in the present case. Also, Report under Section 99 of Insolvency and Bankruptcy Code, 2016 was filed by the Resolution Professional.
- (iii) It was submitted by the counsel for the Applicant that he was burdened up with cases as it was a reopening day after the summer vacations and also held up before the other courts i.e., before Hon'ble Delhi High Court wherein there was a network connectivity issue, Delhi High Court Legal Services Committee for a mediation matter, before Hon'ble Debt Recovery Tribunal, New Delhi and thereafter he rushed before Hon'ble NCLAT, New Delhi. It is due to this reason the counsel could not appear on 08.07.2024. When the counsel tried joining the matter through VC by that time the meeting got ended and it was also informed that this bench will not preside post lunch. The advocate has also submitted an affidavit in this regard to affirm his statement.
- (iv) The Applicant has filed the Application for the initiation of the insolvency resolution process and for the submission of the repayment plan for the settlement of all dues. Upon the appointment of the Resolution Professional for the submission of the Report based on the application filed by the Applicant, it was advised that it is the Resolution Professional who has to assist the Adjudicating Authority based on his report on application whether the application deserves admission or rejection. It was never the intent of the Applicant not to pursue the application for the initiation of the insolvency resolution process. The Applicant was waiting for the order of



admission based on the report filed by the resolution professional as no objection on the report has been filed by the Respondent Bank.

REPLY BY THE RESPONDENT NO. 1

3 The Respondent No.1, in its reply vide Diary No. 02394/2 dated 14.08.2024 has submitted that the RST. A. is not maintainable and thus liable to be rejected/ dismissed based on facts mentioned in the reply, which has been summarized below:

- (i) The applicant has stated in his application that the counsel for applicant bank got held up and due to network connectivity issues could not attend the proceedings of the Tribunal on 08.07.2024, however, there was no representation on behalf of the applicant before the Tribunal on previous dates also i.e. on 20.05.2024 and 03.04.2024 as well as on 08.07.2024, which shows that the applicant was not interested in pursuing the matter further. As such the application is liable to be dismissed.
- (ii) No sufficient cause or justification is shown by the applicant for his non appearance and restoration of the CP. The application for restoration sans a satisfactory explanation for the non-appearance of applicant on multiple hearings of the case. Whereas, the plea of applicant regarding internet connectivity is also not tenable as the counsel for the applicant has stated in the Restoration Application that he was appearing before other courts through VC mode but could not justify his non-appearance before this Tribunal through VC on 08.07.2024. Therefore, the application for restoration is liable to be dismissed.
- (iii) The counsel for the applicant has stated that he was held up before other courts i.e. Delhi High Court, Debts Recovery Tribunal Delhi, NCLAT New



Delhi, as a result, he could not appear before this Tribunal. But even the applicant himself was also not present before this Tribunal, neither any Passovers were sought by any proxy counsel on his behalf. In addition to this, the applicant has also affixed orders i.e. Annexure A-6 of the application wherein his counsel is appearing before other courts at Delhi through Video Conferencing mode, which implies that there were no connectivity issues as stated in the application and it is a lamented excuse to cover up their fault.

(iv) The respondent bank had filed a writ petition CWP No. 3097 of 2024 titled Bank of Maharashtra v/s District Magistrate Gurugram for issuance of writ in the nature of mandamus directing the Ld. District Magistrate, Gurguram to get the Physical Possession of Property of Applicant. The Hon'ble High Court was pleased to pass order in bunch of writ petitions on 28.05.2024 directing the Ld. District Magistrate of state of Haryana to complete the activity of possession u/s 14 of SARFAESI Act till 21.8.2024. Order of Hon'ble Court is enclosed as Annexure R-1.

REPLY BY THE RESPONDENT NO. 2

4 No reply has been filed as none appeared on behalf of Respondent No. 2.

ANALYSIS AND FINDINGS

5 We have gone through the arguments along with their submissions filed by all the parties and have perused the records carefully.

6 The petition i.e. CP(IB) No.34/Chd/Hry/2023 was filed on 05.12.2022 and the applicant has not appeared for last three dates (03.04.2024, 20.05.2024, 08.07.2024) consecutively. Under section 94, once the petition is filed with the registry the interim



moratorium prescribed under section 96 triggers, which operates *in rem* and cause prejudice to the creditors of the petitioners. The contents of Section 96 reads as under:

Section 96. Interim moratorium.

(1) When an application is filed under section 94 or section 95—

(a) an interim-moratorium shall commence on the date of the application in relation to all the debts and shall cease to have effect on the date of admission of such application; and

(b) during the interim-moratorium period—

(i) any legal action or proceeding pending in respect of any debt shall be deemed to have been stayed; and

(ii) the creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt.

(2) Where the application has been made in relation to a firm, the interim-moratorium under sub-section (1) shall operate against all the partners of the firm as on the date of the application.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

7 In the instant case, a writ petition was filed by the Respondent Bank i.e. CWP No. 3097 of 2024 titled Bank of Maharashtra v/s District Magistrate Gurugram. The Hon'ble High Court directed District Magistrate of Haryana to pass order under section 14 of SARFAESI Act 2002. We are conscious that the SARFAESI proceedings are stayed by virtue of section 96 of IBC. The filing and non-pursuance of section 94 petition is nothing but the abuse of process of law and needs to be hammered with iron hand.

8 Hence, when section 94 petition is filed by the petitioner then he has to be an extra careful while prosecuting his case. However, the petitioner- applicant herein acted in a casual manner, even the reasons for the non-appearance does not reflect any sufficient cause. Perusal of daily orders reveals that the petitioner has failed to appear on the last three consecutive dates (03.04.2024, 20.05.2024, 08.07.2024) but



the applicant / petitioner's counsel has offered a reason only for the non-appearance on 08.07.2024 and no explanation has been rendered by him for the non-appearance on previous two dates i.e. 03.04.2024 & 20.05.2024. Now, the petitioner-applicant herein has filed this restoration application and notably, they are appearing on every hearing of RST. A. without any issues. This inconsistent conduct and casual approach of petitioner in pursuing this petition reveals his true intention. Therefore, this pattern of appearance suggests that the petitioner's absence was not due to any genuine reason or reasonable cause but rather a deliberate attempt to delay or obstruct and thwart the SARFAESI proceedings. Moreover, this averse attitude of petitioner does not deserve any protection by this authority. *"Law protects those who are vigilant" (Vigilantibus non dormientibus jura subveniunt).*

9 In the light of aforesaid discussion, we find no merit in this restoration application. Hence, **RST. A. 16 of 2024 is hereby dismissed** with no order to costs.

**-SD-
(Umesh Kumar Shukla)
Member (Technical)**

**-SD-
(Harnam Singh Thakur)
Member (Judicial)**

November 13, 2024