

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL PRINCIPAL BENCH,**  
**NEW DELHI**

**Company Appeal (AT) (Ins.) No. 719 of 2023**  
**& I.A. No. 2396 of 2023**

**IN THE MATTER OF:**

**Rudra Mercantile Pvt. Ltd**  
**Regd. Office: 501 A, Link Rose,**  
**Linking Road, Santacruz - West Mumbai - 400054**

**...Appellant**

**Versus**

**Swastik Metaforge Pvt. Ltd**  
**Regd. Office: G-8, Ground Floor,**  
**Lajpat Nagar - I, New Delhi - 110024**

**...Respondents**

**Present:**

**For Appellant : Mr. Ajay Kumar Jain, Mr. Sourit Arora, Advocates.**  
**For Respondents : Mr. Dhrubajit Saikia, Advocate.**

**O R D E R**  
**(27<sup>th</sup> September, 2023)**

1. This appeal is directed against the order dated 28<sup>th</sup> March, 2023 passed by the 'National Company Law Tribunal, Bench-III, New Delhi (hereinafter referred as to 'the Adjudicating Authority) by which an application bearing Rest.A-47/2023 in IB-2559(ND) 2019 filed by the M/s. Rudra Mercantile Pvt.Ltd (Appellant herein) for restoration of the petition, has been dismissed.

2. While passing the impugned order, the Adjudicating Authority has observed the followings:

*"Rest.A-47/2023*

*"This application has been filed seeking restoration of IB-2559/ND/2019 which was dismissed for non-prosecution vide order dated 05.08.2023. The*

*application has been filed on 21.02.2023 after the period of limitation provided under Rule 48(2) of NCLT Rules, 2016. This application has been accompanied with any terms of application seeking condonation of delay.*

*The present application is therefore dismissed.”*

3. Ld. Counsel for the Appellant has submitted that the Authorized Representative of the Appellant Company is 75 years old woman and was suffering from severe illness, surviving on Oxygen Supplements, B-PAP in her day to day life. Therefore, the Authorized Representative of the Appellant company could not get the status of the petition filed before the Adjudicating Authority and was thus dependant on his counsel. Thereafter, the Appellant had inquired about the status of her petition from its erstwhile Counsel but his counsel did not respond in time and later on informed the Appellant that he could not able to appear before the Adjudicating Authority to which the Adjudicating Authority has dismissed the petition for non-prosecution. By the time the Appellant came to know about the orders, there was already a delay. The Appellant with its new Counsel had approached the Adjudicating Authority by filing a restoration application bearing *Rest.A-47/2023*. The Adjudicating Authority vide its impugned order dated 28.03.2023 has dismissed the said application on the ground of delay in filing of the Application for restoration.

4. On notice, Ld. Counsel for the Respondent has appeared and opposed the appeal on similar pleas which has been recorded by the Adjudicating Authority in the impugned order. Further, Ld. Counsel for the Respondent has submitted that the Appellant has neither given any cogent reasons in the

application seeking restoration of the Application for 150 days' delay in filing the Restoration Application nor filed any application for condonation of delay to condone those days. It is submitted that non-appearance of the Appellant has been recorded in the order dated 23.11.2021 passed by the Adjudicating Authority which read as under:

*“From the previous orders, it is also seen that the Petitioner in the matter has not been present on 18.03.2021, 10.08.2021 and on today's hearing, no one present on behalf of the Operational Creditor.*

*In view of the above, the finally listed for further consideration as a last chance for ensuring the appearance on behalf of the operational creditor on 11.01.2022 on the said date, the petition shall be dismissed in default of non-prosecution.”*

5. Ld. Counsel for the Respondent has referred the Judgment of Hon'ble Supreme Court in the case of *Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy & Ors. (2013) 12 SCC 649*, it is held that the *“Condonation of delay cannot be granted as a matter of course and such a liberal approach cannot be taken when there are no proper grounds given by the Appellant/Applicant”*.

6. We have heard Counsels for the parties and are of the considered opinion that the reason given by the Appellant are not sufficient reason to allow the appeal.

7. In view of the aforesaid facts, we are satisfied that there is no sufficient cause assigned by the Appellant for the purpose of allowing the present appeal. Without going into the merit of the case, we observe that the Adjudicating Authority has rightly dismissed the petition for non-prosecution.

8. Hence, the present appeal is dismissed. No order as to costs.

**[Justice Anant Bijay Singh]**  
**Member (Judicial)**

**[Arun Baroka]**  
**Member (Technical)**

*Raushan*