

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT – II**

Restoration Application No. 5/2024

In

Transferred Company Petition No. 40/2016

Under Rule 11 read with Rule 48 of the
National Company Law Tribunal Rules,
2016

Sanjay Choudhary

Having address at : D3, Nanddham, 16A,
Bangur Nagar, Goregaon West,
Mumbai- 400104,

Applicant

**Flowers Plant and Fruits (India) Private
Limited**

Having address at: 105/106, Provogue House
15 floor, off New Link Road, Andheri
(West), Mumbai- 400053

.... Respondent No. 1

SALIL A. CHATURVEDI

Having address at: Bungalow No.8, Premium
Towers, Lokhandwala Complex, Andheri
west, Mumbai- 400 053

.... Respondent No. 2

IN THE NATIONAL COMPANY LAW TRIBUNAL, COURT-II, MUMBAI BENCH

**Restoration Application No. 5/2024
In
Transferred Company Petition No. 40/2016**

AKHIL A CHATURVEDI

Having address at: Bungalow No. 1,
Premium Units CHS Limited, Versova Link
Road, Lokhandwala Complex Andheri West,
Mumbai- 400053

.... Respondent No. 3

NIKHIL A CHATURVEDI

Having address at: Bungalow No.8, Premium
Towers Lokhandwala Complex,
Andheri West Mumbai- 400 053

.... Respondent No. 4

SHITAL CHATURVEDI

Having address at: Bungalow No.8,
Premium Towers, Lokhandwala Complex,
Andheri West Mumbai- 400 053

.... Respondent No. 5

PROVOGUE (INDIA) LIMITED

Having address at: 105/106,
Provogue House, 1st floor, off New Link Road,
Andheri (W), Mumbai - 400 053

.... Respondent No. 6

IN THE NATIONAL COMPANY LAW TRIBUNAL, COURT-II, MUMBAI BENCH

**Restoration Application No. 5/2024
In
Transferred Company Petition No. 40/2016**

THE REGISTRAR OF COMPANIES MUMBAI

**Having address at: 100, Everest, Marine Drive
Mumbai- 400 002**

.... Respondent No. 7

In the matter of

Sanjay Choudhary

Petitioner

V/s

**Flowers Plant and Fruits (India) Private
Limited & Ors.**

Respondents

Order Delivered on :- 30.09.2024

Coram:

**Mr. Anil Raj Chellan
Member (Technical)**

**Mr. Kuldip Kumar Kareer
Member (Judicial)**

Appearances:

For the Applicant : Adv. Aditya Thakker a/w Rahul Jain

**the Respondent : Adv. Anu Tiwari a/w Aswaini Gawade
and Nashra Sidiqui**

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Appearances:

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**For the Respondent : Adv. Anu Tiwari a/w Aswaini Gawade
and Nashra Sidiqui**

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**Restoration Application No. 5/2024
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ORDER

Per: - Mr. Kuldip Kumar Kareer, Member (Judicial)

- 1 The present application has been filed under Rule 11 read with Rule 48 of the National Company Law Tribunal Rules, 2016 seeking restoration of Transferred Company Petition No. 40/2016 filed under Sections 397-398 of Companies Act, 1956 which was dismissed in default on 26.10.2023.
- 2 It is stated in the application that there is a delay of 74 days in filing this application in terms of Rule 48 of the NCLT Rules. 2016. The delay has arisen since the Applicant, who resides abroad, became aware of the dismissal only on 9th November 2023. Subsequently, they had to travel to India to appoint new advocates, provide them with instructions, and address the situation, which contributed to the delay in filing this application. The Applicant, therefore, submits that the delay of 74 days be condoned, and this application be allowed.
- 3 It is further stated that the Petition was listed for hearing on 10th May 2022, the erstwhile advocate for the Applicant appeared, however, the Petition Could not be heard due to paucity of time.

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4. The Applicant was diligently following up with his Advocates for early hearing of his matter when he was assured that all necessities will be done. The Applicant kept complete faith in his Advocates to do the needful on his behalf before the Tribunal.
- 5 The Applicant submits that the Applicant also reminded his Advocates about next day listing of the matter on board and further requested to attend the same and push for early hearing. The Applicant thereafter did not hear from his Advocates for a long time and he assumed that the matter must have been adjourned due to paucity of time.
- 6 To the Applicant's surprise on or about 9th November 2023. when the Applicant perused the website of this Tribunal to note the case status of the Petition, the Applicant became aware of the order dated 26th October 2023 passed by this Tribunal, dismissing the Petition for default, noting that there is no representation on behalf of the Applicant on various occasions. Immediately thereafter, the Applicant tried to contact his Advocates, who did not pick up his . call and, therefore, the Applicant addressed an email to his erstwhile advocates on 9th November 2023, inter alia, noting that the Applicant had reminded the erstwhile advocates about the listing of the Petition and to mark the presence, however, the same was not done by the

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erstwhile advocate, nor the factum of the dismissal vide order dated 26th October 2023 was informed to the Applicant.

- 7 The Applicant diligently corresponded with his former advocates, requesting updates on the status of the Petition and the details of each hearing. This effort is reflected in emails sent on 8th August 2020, 8th November 2020, 16th November 2020, 29th January 2021, 12th February 2021, 4th March 2021, 11th October 2021, 12th October 2021, 6th December 2021, 4th January 2022, 13th May 2022, 4th July 2022, 18th September 2022, 28th September 2022, 12th February 2023, 16th April 2023, 23rd June 2023, 25th August 2023, and 29th August 2023. In response, the advocates informed the Applicant that on the dates when the matter was listed 07.01.2022, 21.09.2022, 07.12.2022, 13.02.2023, 17.04.2023, 23.06.2023, and 25.08.202, it did not proceed due to "paucity of time," as noted in the orders. The Applicant expressed their concerns about their absence in these orders to their advocates, who explained that when the board is discharged, no appearance is recorded. The Applicant trusted the words of his erstwhile Advocates that paucity of time is a reason that in certain orders passed by this Tribunal in the Petition, no appearance of the advocates for the Petitioner was noted.

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However, the same seems to have ultimately led to the dismissal of the Petition for non-appearance.

- 8 The Applicant submits that from the aforesaid, it is abundantly clear that the nonappearance on behalf of the Applicant in the Petition was completely unintentional, inadvertent and the Applicant has been diligent in ensuring that his erstwhile advocate is always informed of the listing of the Petition. However, it was beyond the control and knowledge of the Applicant that the erstwhile advocate of the Applicant did not attend the hearing when called out, ultimately leading to the dismissal of the Petition for non-appearance.
- 9 In the end, the Applicant has prayed that the application be allowed and T.C.P No. 46/2016 be restored to its original number and be heard and decided on merits.

Reply filed on behalf of the Respondent:

10. In reply, the Respondent has denied all allegations and/ or contentions and/or submissions made by the Applicant in the Restoration Application which are inconsistent with and/or contrary to what has been stated herein. Further, nothing shall be deemed to have been admitted for the reasons of non-traverse

entitled to any orders, as prayed for. The Petitioner is misleading this Tribunal in an attempt to procure favourable orders to cause prejudice and harm to the Respondents.

15. In the end, the Respondent has prayed for dismissal of the restoration application.

Analysis and Findings:

16. We have heard the Counsel for the parties and gone through the record
17. During the course of the arguments, Counsel for the Applicant has argued that the Transferred Company Petition was dismissed in default on 26.10.2023 and the present application for restoration was filed only on 06.02.2024. Counsel for the Applicant has further argued that the Applicant came to know about the dismissal only on 09.11.2023 and there is a delay of 74 days filing in the application. According to the Counsel for the Applicant, the delay in filing the application took place owing to the fact that the Applicant is stationed abroad and he had to come, especially to India to engage a new Counsel for the filing of the application for restoration which took some time and, therefore, the delay of 74 days stands explained and should be condoned.

18. Counsel for the Applicant has further argued that the Applicant, even though stationed abroad, has been following up his case from time to time and has been enquiring from his Counsel about the progress of the case. Counsel for the Applicant has further referred to certain emails annexed with the application whereby the Applicant pointed out with regard to the absence of his Counsel on many dates as was evident from a perusal of the daily orders passed by this Bench in the Transfer Company Petition. However, Counsel for the Applicant explained to him that when the matter is not taken up due to paucity of time, the presence of the Counsel is not usually marked and, therefore, he should not worry. However, subsequently, the Counsel for the Applicant did not appear on many dates with the result that the Transfer Company Petition was dismissed by this Bench for non-appearance of the Petitioner. According to the Counsel for the Applicant, the earlier Counsel appearing on behalf of the Applicant has been negligent and further that the party cannot be made to suffer for the negligence and lack of diligence on the part of his Counsel. Therefore, the application be allowed and Transfer Company Petition No. 40/2016 be restored to its original number.
19. On the other hand, Counsel for the Respondent has argued that the application for restoration is liable to be dismissed as the delay of 74 days has not been properly explained by the Applicant. Counsel for the Respondent

22. The Transfer Company Petition was dismissed in default on 26.10.2023. On 26.10.2023, none was present on behalf of either side. A perusal of the record further reveals that from 07.07.2022 onwards, nobody has been appearing on behalf of the parties, even the Respondent has been absent from all the hearings. Therefore, the fact remains that even the Respondent has not been appearing before this Tribunal for quite some time when the Transfer Company Petition was dismissed in default.
23. It is not disputed that the Applicant is stationed abroad. Counsel for the Applicant has taken us through the emails which were exchanged between the Applicant and his Counsel representing him in the Petition and at one point of time when the Applicant confronted his Counsel with the fact that his appearance was not getting marked in the daily orders, he was told by his Counsel that when the matter was not taken up by the Bench for paucity of time, the presence of the Counsel is not marked as a matter of practice.
24. Having been conveyed this by his Counsel, the Applicant must have become a little relaxed. Therefore, the negligence, if any in not properly following the matter does not appear to be attributable solely to the Applicant. To an extent, the Counsel for the Applicant has also been negligent in not appearing to

follow up the case. It is all the more important considering the fact that the Applicant has been residing abroad. It is a settled proposition of law that a party cannot be made to suffer on account of some fault or negligence on the part of its Counsel. Even otherwise, it is a cardinal principle of law that nobody should be condemned unheard and as far as possible, the cases should be decided on merits after affording an opportunity of being heard to both the parties. Therefore, in our considered view, the application for restoration deserves to be allowed and the delay in filing the application can also be condoned. The mere fact that a separate application has not been filed by the Applicant seeking condonation of delay cannot be made a ground to dismiss the application when the Applicant has specifically stated in the application that there is a delay of 74 days which has also been reasonably explained on account of the fact that the Applicant resides abroad and he had to travel to India to engage a new Counsel with all instructions which must have taken some time to enable the Applicant to file the instant application. Besides in *Collector Land Acquisition, Anantnag & Another Vs. Mst. Katiji & Others, (1987) 2 SCC 107* it has been held by the Hon'ble Supreme Court that the court should adopt a liberal and justice-oriented approach while deciding the existence of sufficient cause. In *Raj Kishore Pandey Vs. State of UP (2009) 2 SCC 692* also it has been held by the Hon'ble Supreme Court that the

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consideration with regard to the existence of sufficient cause is the discretionary power which has to be exercised on sound principles and not on mere technicalities. It was further held that the approach of the court in such matters should be to advance the cause of justice and not the cause of technicalities.

25. In the light of the aforesaid discussion and the law laid down by the Hon'ble Supreme Court in the above cited cases, we are of the considered view that the application deserves to be allowed by condoning the delay of 74 days in filing the application. Resultantly, **Restoration Application No. 5/2024 is allowed** subject to cost of Rs. 10,000 to be deposited to "Bharat Kosh". The **Transferred Company Petition No. 46/2016 shall stand restored** and Registry is directed to list **TP 40(MB)2016** on **11.11.2024** for hearing.

Sd/-

ANIL RAJ CHELLAN
(MEMBER TECHNICAL)
Sushil

Sd/-

KULDIP KUMAR KAREER
(MEMBER JUDICIAL)

Certified True Copy
Copy Issued "free of cost"
On 15.10.2024

[Signature]
Deputy Registrar

National Company Law Tribunal Mumbai Bench

