

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal (AT) No. 292 of 2019

IN THE MATTER OF:

Rahul Kumar

...Appellant

Vs

VM Classes (P) Ltd. & Ors.

...Respondents

Present:

For Appellant: Mr. Kaushal Kishore and Mr. Nityanand Mahto, Advocates.

For Respondents: Mr. Rakesh K. Sharma, Mr. Nishant and Mr. Shailendra Bhardwaj, Advocates.

ORDER

13.12.2019: The Appellant has challenged the order passed by the National Company Law Tribunal, New Delhi Bench, Court No. III dated 29th May, 2019 whereby application for restoration of original Company Petition filed under Section 241-242 of the Companies Act, 2013 by the Appellant has been rejected with following observation:

“ORDER

Learned Counsel for the petitioner is present. In CA No. 363/C-III/ND/2019, which has been moved in relation to the petition filed under Section 241/242 of the Companies Act, 2013 seeking for the restoration of the petition to its original number as the same was dismissed for non-prosecution vide order dated 25.4.2019 by this Tribunal. Paragraph-2 of the application the following submission have been made:

“The Hon’ble Tribunal vide order dated 25.4.2019 further observed that there was no appearance on behalf of the petitioner, even though the junior colleague of the Counsel for the petitioner had appeared and attendance sheet was signed. The Tribunal however, proceeded to dismiss the petition for non-prosecution. A copy of the said order dated 25.4.2019 is being appended herewith as Annexure-A/1.”

However, perusal of the order dated 25.4.2019 specifically shows that even though somebody has signed the attendance sheet, however, in view of non-prosecution on the part of petitioner when the matter was called by this Tribunal and hence was constrained to dismiss this petition for non-prosecution and as well as taking into consideration the earlier orders passed by this Tribunal. Perusal of the order sheet commencing from 23.8.2018 consistently shows that either an adjournment has been sought for on the part of petitioner on one reason or the other there has been no

appearance on the part of petitioner as even today, service to the Respondents is not complete, to which, in this Application, it is averred there is a change of address of the respondents and service was not complete and in the circumstances, affidavit of service has not been able to be filed. We find no plausible reasons as in the absence of address of R-2 & R-3, under NCLT Rules, 2017, the petitioner could have availed other modes and of substituted service as contemplated under Rule 52 of NCLT Rules. It is evident from the averments made in the application despite the lapses on the part of petitioner, the petitioner has chosen to blame this Tribunal as evident from the above said Paragraph extracted from the application. We find it totally unwarranted and more so, in view of the conduct of the petitioner, having signed the attendance sheet but not appeared before this Tribunal when it was called which clearly exposes the conduct which cannot be condoned.

Taking into consideration all the above aspects, we are not in a position to allow this application and under the circumstances, this petition stands dismissed. ”

2. Mr. Rakesh K. Sharma, Advocate appearing on behalf of the contesting Respondent wanted to contest on the ground that the Appellant is simply dragging the matter and not cooperating with the Tribunal and wants to engage the respondent in unnecessary litigation by preferring other cases. It is further pointed out that the Appellant has tried to blame the Tribunal for his own lapses and played an unwarranted role by signing the attendance sheet while staying away from proceedings, thus fabricated the record, as noticed by the Tribunal

3. We find no ground to interfere in the impugned order dated 29th May, 2019. The appeal is accordingly dismissed. No costs.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

[Justice Venugopal M.]
Member (Judicial)

am/gc