

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 259 of 2017

IN THE MATTER OF:

M/s. Somany Ceramics Ltd.

...Appellant

Vs.

Era Infra Engineering Ltd.

...Respondent

Present: For Appellant:- Ms. Priya Daishini Arora, Advocate.

For Respondent:- Mr. Vijay K. Singh and Mr. Vineet Arora, Advocates.

ORDER

03.01.2018— This appeal has been preferred by the Appellant (Petitioner) against the order dated 21st July, 2017 passed by National Company Law Tribunal (hereinafter referred to as “Tribunal”), Special Bench, New Delhi in Company Petition No. (IB)- 79(PB)/2017, which reads as follows:

“This is an application seeking to recall order dated 8.5.2017 dismissing CP.No.(IB)-79(PB)/2017 for non-prosecution. The application for restoration has been filed on 6.6.2017, which is after a period of 14 days. Accordingly, the application is dismissed.”

2. The brief fact of the case is that the Company Petition was preferred by the Appellant (Petitioner) which was pending consideration on merit before the Tribunal. On 2nd May, 2017, when the matter was taken up on

Contd/-.....

the request made on behalf of the learned counsel for the parties to adjourn the case. The case was adjourned to 4th May, 2017. However, for one or other reasons, the case was not listed on 4th May, 2017, and list on the next date i.e. 5th May, 2017 when in absence of counsel appearing on behalf of the Appellant (Petitioner), the hearing was deferred to 8th May, 2017 but without any intimation to the parties. Subsequently, on 8th May, 2017 when the matter was taken up the Tribunal passed the following orders:

“On the last date of hearing, i.e. on 05.05.2017, the matter was called twice and no one had put in appearance on behalf of the Petitioner. The situation has not improved. Even today, the matter was called in the first half and then in the post lunch session. Again no one has put in appearance in support of the Petition. Accordingly, the Petition is dismissed for non-prosecution.”

3. The Appellant preferred the application for restoration on the same ground as taken before this Appellate Tribunal.

4. According to learned counsel for the Appellant, on 2nd May, 2017, on the request of the counsel for the parties, the case was adjourned for 4th May, 2017, but it was not listed on the said date. On 5th May, 2017, though it was listed but the case was not reflected in the website and

the parties were not intimated the next date. On 5th May, 2017, when the matter was adjourned to 8th May, 2017, again the date was not informed to the Appellant (Petitioner) and the Respondent. For the said reason, learned counsel for the Appellant (Petitioner) could not appear on 8th May, 2017, resulting in dismissal of Company Petition for non-prosecution.

5. Learned counsel appearing on behalf of the Respondent while submitted that on 8th May, 2017, the counsel for the Respondent was present, he also opposed the case on the ground that the appeal is time barred and no petition for condonation of delay of three days has been preferred.

6. From the record we find that the certified copy of the impugned order dated 21st July, 2017 as also the order dated 8th May, 2017 and the other orders were provided to the Appellant on 18th August, 2017. Thereafter, the appeal was preferred by the Appellant on 23rd August, 2017 i.e. well within the period of limitation of 30 days. For the said reasons, the objection raised on behalf of the Respondent cannot be accepted.

7. Having heard learned counsel for the parties and taking into consideration the reasons for non-appearance of the counsel for the Appellant (Petitioner), we allow the prayer and set aside the orders dated 21st July, 2017 and 8th May, 2017 passed by the Tribunal in Company

Petition No. (IB)-79(PB)/2017 and restore the Company Petition to its original file. The Tribunal will decide the Company Petition on merit after notice to the parties. The appeal is allowed with aforesaid observation. However, in the facts and circumstances of the case, there shall be no order as to cost.

(Justice S.J. Mukhopadhaya)
Chairperson

Ar/g