

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 483 of 2025

(Arising out of the Order dated 22.01.2025 passed by the National Company Law Tribunal, Mumbai Bench, Court –IV in Rst. A (IBC) No. 73(MB)2024 filed in C.P. (IB) No. 631(MB)2024)

IN THE MATTER OF:

M/S Lok Sewak Leasing & Investment Private Limited,

Having its registered office at:- E-20, 3rd Floor,
Jawahar Park, East Delhi, Delhi – 110092

Email: financefatafat@gmail.com

...Appellant

Versus

M/s GBL Chemical Limited

having its registered office at:- C Wing 1802, Lotus
Corporate Park, Off Western Express Highway, Jai
Coach, Goregaon East,
Mumbai, Maharashtra – 400063

Email: compliance@gblinfra.com

...Respondent

Present

For Appellants: Mr. Akshay Srivastava, Mr. Vivek Kumar, Ms. Raveena Paniker, Mr. Krishna Upreti, Mr. Sudhakar Kulwant, Advocates.

For Respondents: Mr. Aditya Dewan, Mr. Parag Khandhar, Mr. Varun Kalra, Mr. Tapan Raokar, Advocates for R-1.

J U D G E M E N T

(03.07.2025)

NARESH SALECHA, MEMBER (TECHNICAL)

1. The present Company Appeal (AT) (Ins) No. 483 of 2025 has been filed by the Appellant i.e. M/s Lok Sewak Leasing & Investment Pvt. Ltd who is the

Financial Creditor, under Section 61 of the Insolvency and Bankruptcy Code, 2016 (“**Code**”), challenging the Impugned Order dated 22.01.2025 passed by the National Company Law Tribunal, Mumbai Bench, Court – IV (“**Adjudicating Authority**”) in Rst. A (IBC) No. 73(MB)2024 filed in C.P. (IB) N0. 631 (MB) 2024.

2. M/s GBL Chemical Ltd., who is the Corporate Debtor, is the Respondent herein.

3. The Appellant submitted that it is a Non-Banking Financial Company (NBFC) duly registered with the Reserve Bank of India, engaged in providing short-term loans to clients. The Appellant contended that in January 2024, the Respondent, M/s GBL Chemical Ltd., approached the Appellant for a short-term business loan of Rs. 7,03,00,000/- at an interest rate of 10.21% per annum, to be repaid in six instalments of Rs. 1,19,16,667/- each, commencing from 08.02.2024 over a 120-day period. The Appellant further submitted that the terms, were incorporated in a Facility Agreement dated 24.01.2024, executed by the Respondent, its Director, Mr. Ramakant Shankarmal Pilani, and its parent company, M/s Ganesh Benzoplast Ltd., as co-borrowers. A demand promissory note and letter of continuity dated 19.01.2024 were also executed in favour of the Appellant.

4. The Appellant contended that while the Respondent paid the first two instalments on 13.02.2024 and 01.03.2024, it defaulted on the instalment of Rs. 1,19,16,667/- due on 25.03.2024. The Appellant submitted that it issued an

Intimation Letter dated 01.04.2024 and a Demand-cum-Acceleration Notice dated 06.04.2024, demanding the outstanding amount of Rs. 4,77,28,287/- (computed as on 05.04.2024) within seven days. The Appellant further contended that, despite receiving the notice, the Respondent failed to clear the dues by 13.04.2024, thereby committing a default under the Facility Agreement.

5. The Appellant submitted that, in response to the Respondent's default, it filed an application under Section 7 of the Code on 08.05.2024 before the Adjudicating Authority, seeking initiation of the CIRP against the Respondent which was registered as C.P. (IB) No. 631(MB)/2024 ("Section 7 Application").

6. The Appellant submitted that based on liberty granted by the Adjudicating Authority's order dated 04.09.2024, it e-filed an Additional Affidavit dated 26.09.2024 on 27.09.2024 (e-filing no. 2709138047692024), placing the Facility Agreement and other requisite documents on record. The Appellant contends that the affidavit was served on the Respondent via email on 27.09.2024 at its registered email address. However, the Appellant submitted that due to minor defects noted by the registry of NCLT, the affidavit remained under objection on 30.09.2024.

7. The Appellant contended that on 30.09.2024, the Section 7 Application was dismissed by the Adjudicating Authority for non-prosecution due to the non-appearance of its then-counsel. The Appellant submitted that the Adjudicating Authority erroneously observed that the Appellant appeared disinterested in pursuing the matter, as no counsel appeared, and the additional affidavit was not

formally presented. The Appellant contended that this dismissal resulted solely from the failure of its then-counsel to appear or inform the Adjudicating Authority of the e-filed affidavit, a circumstance entirely beyond the Appellant's control.

8. The Appellant submitted that it was unaware of the dismissal of the Section 7 Application on 30.09.2024 due to the failure of its then-counsel to communicate the status of the case or the dismissal order. The Appellant contended that despite multiple attempts to contact the then counsel, it received no response, leaving it uninformed about the proceedings until a new counsel was engaged.

9. The Appellant submitted that, upon learning of the dismissal through its newly engaged counsel, it promptly filed an application on 29.10.2024 under Rule 48(2) r/w Rule 11 of the National Company Law Tribunal Rules, 2016, seeking restoration of the Section 7 Application. The Appellant contended that the application was registered as Rst. A (IBC) No. 73(MB)/2024 ("Restoration Application"). The Appellant further submitted that on 27.11.2024, the Adjudicating Authority directed it to serve a copy of the Restoration Application on the Respondent's counsel, adjourning the matter to 22.01.2025. The Appellant submitted that it duly complied with the Adjudicating Authority's direction by serving the Restoration Application on the Respondent's counsel. The Appellant further submitted that both parties were heard on 22.01.2025, when the Restoration Application was taken up for consideration.

10. The Appellant contended that during the hearing on 22.01.2025, it advanced the following submissions before the Adjudicating Authority:

- (a) The Additional Affidavit dated 26.09.2024, e-filed on 27.09.2024, was based on the Adjudicating Authority's order dated 04.09.2024 but was lying under defects due to registry objections, a fact not communicated to the Appellant due to the non-appearance of his the then-counsel.
- (b) The non-appearance on 30.09.2024 was solely due to the fault of the then-counsel, who failed to inform the Appellant of his inability to appear, thus causing the dismissal for non-prosecution.
- (c) Relying on the Hon'ble Supreme Court's judgment in Secretary, Department of Horticulture, Chandigarh & Anr. v. Raghu Raj [Civil Appeal No. 6142 of 2008], the Appellant argued that a party should not suffer due to the default or non-appearance of its advocate.

The Appellant submitted that it prayed for restoration of the Section 7 Application based on these grounds.

11. The Appellant submitted that the Impugned Order violates principles of natural justice by failing to record or adequately address the submissions made during the hearing on 22.01.2025. The Appellant contended that the Adjudicating Authority's dismissal of the Restoration Application without due consideration of the Appellant's bonafide efforts and the inadvertent default of its counsel renders the order arbitrary and legally unsustainable.

12. The Appellant submitted that the Section 7 Application is meritorious, as it establishes a clear debt and default by the Respondent, substantiated by the Facility Agreement, demand promissory note, and Demand-cum-Acceleration Notice. The Appellant contended that the dismissal of the Section 7 Application for non-prosecution and the subsequent refusal to restore it have unjustly deprived the Appellant of its right to pursue legitimate claims under the Code.

13. The Appellant contended that the Impugned Order has caused irreparable prejudice by denying it the opportunity to seek recovery of Rs. 4,77,28,287/-, a legitimate debt owed by the Respondent. The Appellant submitted that the dismissal of the Restoration Application perpetuates the injustice caused by the non-appearance of its then-counsel, undermining the principles of equity and fairness enshrined in the Code.

14. Concluding his arguments, the Appellant requested this Appellate Tribunal to set aside the Impugned Order and allow its appeal.

15. Per contra, the Respondent, denied all averments made by the Appellants as misleading and baseless.

16. The Respondent submitted that the Appeal lacks substance and is an attempt to obfuscate the Appellant's repeated failures in complying with the Adjudicating Authority's directions and pursuing its case diligently. The Respondent contended that the Adjudicating Authority rightly dismissed the Restoration Application due to the Appellant's non-compliance with the order

dated 04.09.2024, and non-appearance on 30.09.2024, as recorded in the Impugned Order.

17. The Respondent submitted that the Restoration Application was filed beyond the mandatory 30-day period prescribed under Rule 48(2) of the NCLT Rules, 2016. The Respondent contended that the dismissal order was passed on 30.09.2024, and the advance copy of the Restoration Application was served on the Respondent only on 25.11.2024, well beyond the permissible period. The Respondent asserted that the Appellant's failure to file an application for condonation of delay renders the Restoration Application time-barred and incapable of consideration by the Adjudicating Authority.

18. The Respondent submitted that the Adjudicating Authority, vide its order dated 04.09.2024, directed the Appellant to file three specific documents within two weeks i.e. by 18.09.2024, to substantiate its Section 7 Application. The Respondent contended that the Appellant filed only one document—the alleged agreement—via an Additional Affidavit, which was defective and not cured by the hearing date of 30.09.2024. The Respondent asserted that partial compliance does not fulfil the Adjudicating Authority's directive.

19. The Respondent further submitted that the Appellant neither sought an extension of time to file the remaining documents nor provided any explanation for its failure to comply fully. The Respondent contended that this inaction reflects gross negligence and a disregard for judicial directions.

20. The Respondent asserted that the dismissal of the Section 7 Application on 30.09.2024, was not solely for non-prosecution but also for non-compliance with the order dated 04.09.2024. The Respondent submitted that this dual basis for dismissal precludes restoration under Rule 48(2), which applies only to dismissals for non-appearance.

21. The Respondent submitted that the Appellant failed to demonstrate sufficient cause for its non-appearance on 30.09.2024, as required under Rule 48(2). The Respondent contended that the Appellant's attempt to shift blame to its erstwhile counsel is untenable, as litigants are bound by their agents' actions, as per *Mohd. Hasan v. Farooq* (2016 SCC OnLine Del 3490). The Respondent asserted that the Appellant's vague claims of counsel's failure to appear or communicate do not constitute sufficient cause.

22. The Respondent contended that the Appellant failed to address critical questions, like why no representative appeared on 30.09.2024, why no alternative counsel was engaged despite alleged non-responsiveness of the original counsel and why no steps were taken to ascertain the case status prior to the hearing.

23. The Respondent asserted that the Appellant, as a litigant, owed a duty to diligently pursue its case, as established in *Harinder Singh v. Kuldeep Singh* (SLP(C) 34049/2010). The Respondent submitted that the Appellant's callous approach, including its failure to monitor the case or rectify defects, disentitles it from relief.

24. The Respondent further submitted that the alleged debt of Rs. 4,77,28,287/- is based on forged and fabricated documents, including the alleged Facility Agreement dated 24.01.2024, demand promissory note, and letter of continuity. The Respondent contended that no such transaction was entered into with the Appellant, and the alleged disbursal of Rs. 7,03,00,000/- was made to a fraudulent account not belonging to the Respondent.

25. The Respondent asserted that the validity of these documents is under challenge in Commercial Suit No. 1169 of 2024 before the Commercial Court, Mumbai. The Respondent submitted that it denies receiving any Demand-cum-Acceleration Notice or paying instalments, as alleged by the Appellant. The Respondent contended that these issues, while not central to the Appeal, highlight the Appellant's mala fide intent and the lack of credible evidence supporting its Section 7 Application.

26. The Respondent submitted that the merits of the alleged debt are not relevant to the present Appeal, which concerns the procedural lapses in the Restoration Application. The Respondent contends that the Adjudicating Authority's dismissal was based on the Appellant's failure to substantiate its claim, not the substantive merits of the debt.

27. The Respondent submitted that the Adjudicating Authority's dismissal aligns with established legal principles:

- a. *Nathu Prasad v. Singhai Kapurchand* (1976 AIR (MP) 136) mandates that restoration under Rule 48(2) requires sufficient cause for non-appearance, which the Appellant has failed to demonstrate.
- b. *Rudra Mercantile Ltd* (Appeal No. 719/2023) confirms that this Appellate Tribunal dismisses appeals for restoration where reasons are insufficient, as in the present case.
- c. *Satya Pal Wadhera v. UOI* and *State v. Wajid* hold that litigants cannot disown their advocates' actions to seek relief, reinforcing the Appellant's responsibility for its lapses.

28. The Respondent contended that the Code mandates expeditious resolution, and the Adjudicating Authority's dismissal upholds this objective. The Respondent submitted that the Appellant's failures to comply with directions of the Adjudicating Authority to file documents, and appear cannot be condoned, as they frustrate the Code's purpose of time-bound adjudication.

29. Concluding his pleadings, the Respondent requested this Appellate Tribunal to dismiss the appeal with costs.

Findings

30. The appeal is confined to the issue of dismissal of restoration application filed by the Appellant against the order dated 30.09.2024 of the Adjudicating Authority whereby, the original C.P. (IB) N0. 631 (MB) 2024 of the Appellant was dismissed for non-prosecution. At this stage, we would look into the order of the Adjudicating Authority whereby the appeal was dismissed vide order dated 30.09.2024 passed in C.P. (IB) N0. 631 (MB) 2024, which reads as under: -

“1. When the matter was called twice, none present for the Financial Creditor. Mr. Nausher Kohli i/b DSK Legal, Ld. Counsel for the Corporate Debtor present.

2. This Bench observes that on 04.09.2024, Ld. Counsel for the Financial Creditor sought two weeks' time for filing agreement between the parties along with financials for the year 2023-24 and NeSL Certificate, by way of an additional affidavit and on the request of Counsel for the Financial Creditor matter was listed today i.e. on 30.09.2024. Today, when the matter is called twice, none appears on behalf of the Financial Creditor nor filed any affidavit or above documents before this Bench. It seems that the Financial Creditor is not interested in pursuing the matter. Hence, C.P. (IB)/631(MB)2024 is dismissed for non-prosecution.”

(Emphasis Supplied)

From above, we observe that the Adjudicating Authority called the case twice, however, neither the Appellant nor his representative appeared, whereas

the legal counsel for the Respondent was available. The Adjudicating Authority also observed that based on the request of the Appellant itself, Appellant was given two weeks' time for filing agreement between the parties along with the financial statement in the year 2023-24 and NeSL certificate by way of an additional affidavit. However, the same additional affidavit was not filed by the Appellant before the Adjudicating Authority. As such, the Adjudicating Authority concluded that the Appellant was not serious for prosecution of his case and dismissed the case of the Appellant accordingly.

31. We have noted that it is the case of the Appellant that its the then counsel appearing on behalf of the Appellant/ Financial Creditor, did not appear before the Adjudicating Authority on 30.09.2024 and also did not intimate the Appellant. It is further the case of the Appellant that it kept on chasing with the then counsel and subsequently, he appointed new counsel only after which he came to know that his case was dismissed for non- prosecution.

32. As regard, the non-filing of the additional affidavit, the Appellant submitted that it filed an additional affidavit on 26.09.2024, however, the same remained in defects and since his the then counsel could not follow it up for curing defects, the affidavit could not be represented before the Adjudicating Authority on the date of appearing and accordingly, the Adjudicating Authority vide order dated 30.09.2024 (already noted above) dismissed the appeal erroneously for non-prosecution, for which the Appellant was not at fault.

33. We note that in terms of Rule 48 (2) of the NCLT Rules, 2016, the restoration application is required to be filed by such litigant within 30 days. We observe that the restoration application bearing Rst. A (IBC) No. 73(MB)2024 filed in C.P. (IB) N0. 631 (MB) 2024 was filed by the Appellant on 29.10.2024 which was done within stipulated 30 days. During pleadings, the Respondent submitted that the Appellant did not file the restoration application within stipulated 30 days, since, the Respondent did not receive the copy of such restoration application on time. Based on the facts, we are not convinced with the arguments of the Respondent and find that the restoration application was filed within the stipulated period. We also note that the Adjudicating Authority has also not passed any adverse order on the account of delay on the part of the Appellant while dismissing Restoration Application.

34. We note that the restoration application bearing Rst. A (IBC) No. 73(MB)2024 filed in C.P. (IB) N0. 631 (MB) 2024 filed by the Appellant, was dismissed by the Adjudicating Authority vide order dated 22.01.2025. The same reads as under: -

“RST.A/73/2024

1. Mr. Vivek Kumar a/w Ms. Raveena Panicker, Ld. Counsel for the Applicant present (VC). Mr. Nausher Kohli a/w Mr. Parag Khandhar, and Mr. Tapan Radkar i/b DSK Legal, Ld. Counsel for the Respondent present.

2. The Counsel for the Financial Creditor filed this application for Restoration of Section 7 Application which was dismissed on 30.09.2024 for non-prosecution.

3. The Order Sheet shows that the Financial Creditor sought two weeks' time to file an agreement between the parties along with the financials for the year 2023-2024 and NeSL certificate by way of an Additional affidavit from 04.09.2024. This Bench had granted time upto 30.09.2024. On 30.09.2024, there was no representation on behalf of the Financial Creditor when the matter was called twice. The Financial Creditor also chose not to file the agreement of loan between the two parties, financials of 2023-2024 to substantiate the claim/debt and NeSL certificate. On the 30.09.2024 the Bench had taken a view that neither the FC was represented nor the crucial documents evidencing the right of the FC were filed despite giving an opportunity to the FC to do so. Therefore, the CP was dismissed for non-prosecution.

4. The Restoration IA filed by the FC against the dismissal the case was posted on 27.11.2024 and adjourned to 22.01.2025. We observe that till today the FC has not filed the necessary documents to established its claim. The FC has filed restoration application but has failed to cure the defects in the Original petition despite several opportunities. We therefore, deem it fit to **dismiss** the restoration IA.”

(Emphasis Supplied)

From above, it is seen that the first three paras bring out earlier facts and in only last para no. 4, the Adjudicating Authority has recorded that the Appellant has not filed necessary documents to establish its claim and thus dismiss the Appellant's restoration application, since, the Appellant could not cure the defects in the original petition despite several opportunities.

35. We note that the original petition was dismissed for non-prosecution on two accounts i.e., the non-presence of the Appellant or its counsel and secondly on account of non-submission of additional affidavit and documents.

36. We further observe that while dismissing the restoration application vide Impugned Order dated 22.01.2025, the Adjudicating Authority has not mentioned anything regarding non-appearance of the Appellant or his legal counsel on the original date of hearing. The only reason the Adjudicating Authority had dismissed the restoration application is for reason that the Appellant has failed to cure the defects of original petition and non-filing of documents which was sought to be filed by the Appellant itself.

37. At this stage, we also take into consideration that the additional affidavit was filed by the Appellant before the NCLT on 26.09.2024 enclosing the copy of the facility agreement between the Appellant and the Respondent. We take into account the defect sheet which has been put up to us in the present appeal as Annexure A-6 which reads as under: -

Scrutiny Defects Raised

Diary No : 2709138047692024
Petitioner : LOK SEWAK LEASING AND INVESTMENT PRIVATE LIMITED
Respondent :

Serial No.	Description	Comments
1	Remarks of - Scrutiny Clerk/Assistant Registrar/Deputy Registrar	1.upload clear page copy of blur pages. (page number-5-15)

From above, it seems that the defect was pointed out on account of non-clear pages, which were not available.

38. We understand that normally, the company petition / appeal are dismissed for non-prosecution when the Appellant/ litigant or authorised representative or his counsel is not present and the Tribunal is of the view that the Appellant is non-serious for prosecution of the case. The Tribunal may also take into account repeated non-appearance of the litigant and also failure from the part of the Appellant to take necessary steps within stipulated time frame or finagling documentation as ordered by the Tribunal. We have already noted that in the present case it was the Appellant itself which sought to file the additional affidavit enclosing documents including loan agreement etc. after getting permission of the Adjudicating Authority. We note that the additional affidavit was indeed filed, however, remained in defects, which according to the Appellant was due to non-active participation of the then counsel of the Appellant, who did not take necessary action for curing defects or brought to the notice of the Appellant. We

further take into consideration that this was curable defects and could not affect the merit of the case.

39. We find that the Tribunal can allow the restoration application, if sufficient cause is made out by the litigants. In the present case, the reasoning given by the Appellant was non-appearance of the counsel and thereafter non-curing the defects, could have been treated as sufficient cause.

40. We note that it is for the Tribunal to decide whether the sufficient cause has been made out by the Appellant while perusing the restoration application or not, however, the same cannot be purely treated as discretionary.

41. We note that as per the Rule 48 of the NCLT Rules, 2016, if sufficient cause is made out, and is within the stipulated 30 days, the Tribunal is obligated to restore the same. The Rule 48 of the NCLT Rules, 2016 reads as under: -

“Rule 48 (2): Where the petition or application has been dismissed for default and the applicant files an application within thirty days from the date of dismissal and satisfies the Tribunal that there was sufficient cause for his non-appearance when the petition or the application was called for hearing, the Tribunal shall make an order restoring the same:

Provided that where the case was disposed of on merits the decision shall not be re-opened.”

(Emphasis Supplied)

42. Thus, the Rule 48 (2) of uses the word “shall” which signify that if sufficient cause is made out, then it is expected that the Tribunal shall allow restoration application. The purpose of dismissal for non-prosecution is for procurement of the concerned party and his counsel and not to dismiss the appeal without going into the merit. This is a general spirit and courts follow the same including this Appellate Tribunal. At this stage, we also take into consideration that the liberal view is to be taken in such issues provided the litigant is not casual and non-vigilant.

43. In the present appeal, we have seen that the Appellant was not casual and it filed restoring appeal within 30 days as provided in the regulations. We also note that the Appellant had also filed the facility agreement i.e., loan agreement between the parties which remain in registry for want of rectification of the defects, which was curable in nature. We need to be aware of the fact that it was the Appellant itself, which sought to file the Additional Affidavits which was allowed by the Adjudicating Authority and not at the initial directions of the Adjudicating Authority. Looking from different angle even if the additional affidavit was not filed, the matter could have heard on its own merit. Therefore, the dismissal of restoration application on the ground, that the additional affidavit was lying in defects with registry, cannot be allowed to be sustained.

44. We also take into consideration the judgment of *Sunita Vs. Lalit Sansawal* [FAO No. 118 of 2024] passed by the Hon’ble Delhi High Court. The relevant para reads as under: -

“restoration application should be dealt with liberally as right to represent one’s cause before the court is a fundamental one”.

(Emphasis Supplied)

This judgement of the Hon’ble Delhi High Court supports the cause of the Appellant in the present appeal.

45. Similarly, we also take into consideration the judgment delivered by the Hon’ble Supreme Court of India in the case of ***Rafiq & Anr. vs. Munshilal & Anr. [(1981) 2 SCC 788]***, where the Hon’ble Supreme Court of India observed that “a litigant who has entrusted his case to his lawyer cannot be penalized for the lapse or negligence of his lawyer” It was finally held in the same case that “unless a litigant is a lawyer by professional or is otherwise a man of law, he cannot be expected to know what is happening in the court unless the lawyer appearing for him informs him.”

We note that the present case is squarely covered within the ratio of the Hon’ble Supreme Court especially noting that the Appellant is a financial creditor and not a trained lawyer and it is therefore entitled to get benefit, as per ratio of the Hon’ble Supreme Court of India.

46. In fine, the appeal succeeds and the Impugned Order is set aside. The original petition bearing in Rst. A (IBC) No. 73(MB)2024 filed in C.P. (IB) N0. 631 (MB) 2024 is restored back to be heard by the Adjudicating Authority.

47. We make it clear that while passing this order, we have not touched upon any merit of the case and it is for the concerned parties to make out their case including debt and default etc. by submitting suitable documentation.

48. The Adjudicating Authority shall further decide the case based on the facts of the case and in accordance with the law without being influenced by any of the above observations. Both the parties are directed to appear before the Adjudicating Authority on **15.07.2025**.

49. No costs. I.A., if any, are closed.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

[Mr. Indavar Pandey]
Member (Technical)

Sim