

I.A. No. 1570 OF 2024 in IA(IB) No. 1061/KB/2021
IN
C.P.(IB) No. 176/KB/2018

IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH (COURT-II)
KOLKATA

I.A. No. 1570 OF 2024
IN
I.A.(IB) No. 1061 OF 2021
IN
C.P.(IB) No. 176/KB/2018

An application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016.

In the matter of:

State Bank of India

-Financial Creditor

Versus

Implex Metal & Ferro Alloys Ltd.

-Corporate Debtor

And

In the matter of:

Eastern Power Distribution
Company of Andhra Pradesh Ltd.

-Applicant

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Versus

Samir Kr. Bhattacharya, Liquidator of
Implex Metal & Ferro Alloys Ltd.

-Respondents

Coram:

Mr. Labh Singh, Hon'ble Member (Judicial)

Ms. Rakha Kantilal Shah, Hon'ble (Technical)

For applicant	Mr. Joy Saha, Ld. Sr. Advocate Mr. Sidhartha Sharma, Ld. Advocate Mr. Rishav Dutt, Ld. Advocate Mr. Aman Kataruka, Ld. Advocate
For Liquidator	Mr. Rahul Anddy Ld. Advocate Mr. Aditya Goopta Ld. Advocate
For Applicant in IA No. 1207/2023	Ms. Tanvi Luhariwala Ld. Advocate Ms. Madhuja Barman Ld. Advocate
For SBI in IA 845/2021	Ms. Deblina Lahiri, Ld. Advocate Mr. Mrinmoy Chatterjee Ld. Advocate
For R-3 in IA 845/2021	Mr. Shreyash Basu Dasgupta, Ld. Advocate

Order pronounced on: 13.11.2025

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O R D E R

Labh Singh Judicial Member

1. The present application has been filed to recall order dated 8th November 2023 passed on IA 1061 of 2021 whereby the said IA was dismissed for default and to restore the matter on board for hearing and deciding the same afresh on merits.
2. Briefly stated that the facts of the case are that this Tribunal admitted Implex Metal & Ferro Alloys Ltd. in CIRP Process in Company Petition(IB) No. 176 of 2018 vide order dated 9th March, 2018. Since there was no resolution of the Corporate Debtor during CIRP process, and accordingly this Tribunal vide order dated 12th February 2019 admitted that the Corporate Debtor into liquidation. Thereafter, the Corporate Debtor was sold as going concern in liquidation, and from time to time, this Tribunal directed the applicant to reconnect the electricity of the Corporate Debtor/Company in liquidation and to continue supply of electricity to the CD in liquidation. The number of applications were filed against the Corporate Debtor in liquidation for recovery of dues and a number of applications were also filed by the applicant for reconnection of electricity and refund of charges paid.

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3. It has further been stated that the applicant engaged Shri. Rakesh Kr. Sharma as an Advocate on record to pursue the applications. The said Shri. Rakesh Kr. Sharma had represented to the applicant that he had Chambers at New Delhi as well as Kolkata. He assured his regularly appearing before various Courts including National Company Law Tribunal in Kolkata. Hence, upon his assurance and interest, the applicant engaged Mr. Rakesh Kr. Sharma as Advocate in all matters pertaining to Implex Metal & Ferro Alloys Ltd.
4. It has further been stated that the applicant has filed IA No. 1061/2021 during the month of December 2021. Though the pleadings were duly completed on the said IA; however, no step was taken by the said Advocate of the applicant for hearing of the said application. The applicant further pleaded that a huge amount of Rs.20,72,84,722/- was to be paid as CIRP cost under the waterfall mechanism before any other payments were to be made.
5. In the beginning of 2023, the applicant came to know that Mr. Sharma was unable to give any personal attention to the matter pending before this Tribunal who was practising in Delhi and hardly ever visited Kolkata. The applicant later on discovered that Shri. Rakesh Kumar Sharma had a perfunctory set up in Kolkata and had entrusted the case to

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a junior colleague and Associate who was unable to take effective steps before this Tribunal to protect the interest of the applicant. Mr. Rakesh Kumar Sharma never appeared physically before this Tribunal despite repeated assurances to do the same.

6. It has further been stated that from a perusal of the record, it reveals that Mr. Rakesh Kumar Sharma and his Associate Mr. Nishant Sharma last time appeared in IA No. 1061/2021 on 24th April, 2023 and thereafter stopped appearing in the matter. Accordingly, the matter could not be represented by anyone on 16th July 2023, 25th July 2023, 31st August 2023, 27th September 2023 and 8th November 2023.
7. It has further been stated that though the applicant appeared through its newly engaged Advocate Shri. Rakesh Kumar Sharma who defended the IA Nos. 712 of 2023 and 723 of 2023. However, the applicant was unable to take up any steps with regard to IA No. 1061 of 2021. Despite repeated requests of the applicant, No Objection was furnished by Mr. Rakesh Kumar Sharma Advocate. Thus Mr. Rakesh Kumar Sharma failed to appear in the matter and the same was dismissed for default by the Tribunal vide order dated 8th November 2023.

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8. It has further been stated that the applicant is an Undertaking of Government of Andhra Pradesh. The applicant is fully owned by the State of Andhra Pradesh. The claim of the applicant for the said sum of Rs.20,72,84,722/- contained in IA No. 1061 of 2021 constituted CIRP cost which in law are to be paid before any other payments are made to any other Creditors or Stakeholders.
9. Therefore, the said IA is of vital importance for the applicant. The applicants have taken all necessary steps by engaging Advocate to appear in IA No. 1061 of 2021. After dismissal of the said IA, the applicant has repeatedly requested Mr. Rakesh Kr. Sharma for granting No Objection to the applicant. The applicant could not take necessary steps to file the IA timely as No Objection was received from Mr. Rakesh Kumar Sharma after a considerable delay. The applicant is based at Vishakhapatnam in the State of Andhra Pradesh while its Advocate was based in New Delhi; and hence for this reason, the applicant could not follow up the matter.
10. Ultimately in the third week of July 2024, the applicant approached its present Advocate Mr. Sharma Advocates and Legal Consultants LLP to file the present application. The present application filed within a period of limitation to

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take immediate steps from the date of dismissal. Consequently, the present application requires to be allowed and application no. IA No. 1061/KB/2021 requires it to be restored, being not barred by law of limitation.

11. Respondent No. 1 appeared before this Tribunal and filed its reply opposing the present application. It has been replied that the present application is bad in law and should be dismissed at threshold. The present application is not maintainable in law being barred by law of limitation. The application for restoration was required to be filed within a period of 30 days from the date of order of dismissal. The IA No. 1061 of 2021 was dismissed on 8th November 2023 and the present restoration application had to be filed on or before 7th December, 2023. However, the present application has been filed after a delay of seven and half months from the date of the order of dismissal on 25th July 2024. There is no sufficient explanation provided in the present application for restoration of the application. There is no prayer for condonation of delay in filing the restoration petition.
12. It has further been replied that appellant has restored to clever tactics for restoration of the petition. The present application was not pursued with due diligence with regard

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to its claim in IA No. 1061 of 2021. The liquidator, vide email dated 27th September, 2021, informed the applicant that no amount is payable to the applicant as CIRP cost. The applicant being aggrieved from the decision of the liquidator filed an appeal under Section 42 of the IBC Code, 2016 within 14 days. On 10th October, 2021, the appellant filed an application on 1st/3rd December, 2021 to bypass the 14 days requirement. Thus, the conduct of the applicant is evident to delay in filing a claim and resorted to clever tactics by passing the specific provision of law.

13. It has further been replied by the liquidator that the applicant has filed IA No. 1061 of 2021 in December 2021 and thereafter, supplementary affidavit was filed in February 2022. The applicant appeared in April 2023, but thereafter none appeared for the applicant. Therefore, this Tribunal rightly dismissed the petition for default.
14. It has further been replied if their Advocate has not appeared in the case, the applicant has not bothered about the same. It is evident that the applicant is not at all bothered or concerned with its case. In the instant application, the applicant, even being aware of the dismissal of the IA of November 2023 waited for seven and

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half months to file a restoration application. Therefore, delay is not acceptable at all.

15. It has further been replied that insofar as the claim of the applicant as CIRP cost is concerned, the distribution of the sale has already been done in accordance with Section 53 of the IBC Code, 2016. There is an insignificant balance left which shall be distributed further amongst Financial Creditors. The liquidation is at the stage of closure since Corporate Debtor had already been sold as going concern way back in the year 2021. Therefore, in view of these circumstances, the application IA No. 1061/KB/2021 cannot be restored and the present application deserves to be dismissed on its merits.
16. The applicant filed rejoinder reiterating the facts pleaded in the original application and denying the content of reply which are not reproduced here for sake of brevity and prayed for allowing the present application for restoration.
17. The applicant has filed supplementary affidavit stating therein that it engaged its new Advocate on 20.03.2024 and handed over the documents for filing the present application. The applicant has acted diligently. The delay, if any, of 230 days between the order passed for dismissal

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and preferring the present application has been elaborated in detail. Section 5 of the Limitation Act 1963 applies to the present application.

18. Heard learned Counsel for both the parties. We have gone through the record of the present case. We have duly appreciated the law applicable on the facts and circumstances of the present case.
19. Learned Counsel for the applicant argued that the matter was dismissed due to sole reasons that its earlier Advocate failed to appear in the matter and the applicant came to know about this fact in September 2023. Thereafter, a delay occurred in obtaining no objection from the earlier Advocate. After No Objection was received in July 2024, then the applicant filed the present application.
20. Learned Counsel for the applicant, in support of his argument, has relied upon judgments passed by Hon'ble Supreme Court in case of Rafiq and Ors Vs. Munshilal & Anrs 1981(SCC) 788, Smt. Lichi Tewari and Others Versus Director of Land Records and Others 1984(Supp) SCC 431 and case of B.K Educational Services Private Limited Versus Parag Gupta and Associates (2019) 11 SCC 633

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21. Before proceeding to decide the present application on its merits, it is pertinent to refer to the relevant provision of Rule 48 of the National Company Law Tribunal Rules 2016, which provides for dismissal of default of an application and provision for restoration thereof. The relevant Rule 48 is being reproduced as under:

“48. Consequence of non-appearance of applicant.- (1) Where on the date fixed for hearing of the petition or application or on any other date to which such hearing may be adjourned, the applicant does not appear when the petition or the application is called for hearing, the Tribunal may, in its discretion, either dismiss the application for default or hear and decide it on merit.

(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”.

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22. Thus, as per the provision mentioned in Rule 48(2), when an application has been dismissed for default and the Applicant files an application within 30-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 for restoring the same. Thus, the provision clearly mentions that where the date fixed for hearing of the petition or the application on any other date to which the hearing may be adjourned, the Applicant has to give satisfactory reasons and sufficient cause for his non-appearance on that date of hearing.
23. The applicant, in this case, had a limitation period of 30 days commencing from the date of order of dismissal dated 08th November 2023 for restoration of the application, i.e. on or before 07th December 2023, to file application for restoration. As a result, the applicant should have filed the application for restoration on or before 07.12.2021.
24. In “Neerja Realtors Private Limited V. Janglu (dead) through legal representative (2018)” it was ruled that, in order to succeed in the proceeding, the petitioner has to satisfy the court that they were prevented by sufficient cause from

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appearing on the date of application when it was called for the hearing.

25. Learned Counsel for applicant relied upon judgment passed by Hon'ble Apex Court in case of Rafiq and Ors Vs. Munshilal & Anrs 1981(SCC) 788 wherein Hon'ble held that a party could not be allowed to suffer for inaction on the part of his Advocate. The relevant paragraph of the Hon'ble Apex Court Judgment is as follows:

“The problem that agitate us is whether it is proper that party should suffer for the inaction, deliberate, omission, or misdemeanour of his agent. The answer obviously is in the negative. May be that the Learned Advocate absented himself deliberately or intentionally. We have no material for ascertaining that expect in the matter. We say nothing more on that aspect of the matter. However, we cannot be a party to innocent party suffering injustice merely because his chosen Advocate defaulted.”

25. Learned Counsel for applicant further relied upon judgment passed by Hon'ble Supreme Court in case of Smt. Lichi Tewari and Others Versus Director of Land Records and Others 1984(Supp) SCC 431 wherein Hon'ble Apex Court held that if

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petitioner/plaintiff engage is Advocate, that must be considered to be adequate step for condonation of default in appearance before the court and restoration of the application.

26. Learned Counsel for applicant further relied upon judgment passed by Hon'ble Supreme Court in case of B.K Educational Services Private Limited Versus Parag Gupta and Associates (2019) 11 SCC 633 wherein Hon'ble held that provision of the Limitation Act 1963 applies on the IBC proceedings.
27. Though restoration application should be dealt with liberally as right to represent one's cause before the court is a fundamental one, but this does not mean that a litigant who has deliberately not taken steps for pursuing the remedy at the earliest should take advantage of liberal approach.
28. In the present application, it is admitted case of the applicant that it came to know in the beginning of the year 2023 that erstwhile Advocate Mr. Rakesh Kr. Sharma is unable to attend the matter with due diligence before this Tribunal and unable to take effective steps before this Tribunal. It is further case of the applicant that though it was taking effective steps in IA No. 712 and 723 of 2023 through its newly engaged Advocate but the applicant was unable to take

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any step in the matter IA No. 1061 of 2021 despite repeated request of the applicant Mr. Rakesh Sharma Advocate not giving "No Objection" and accordingly could not engage Mr. Sharma & Sharma Advocates and Legal Associates.

29. It is a further case of the applicant that since the dismissal of said IA no. 1061 of 2021 on 8th November 2023, the applicant has regularly and repeatedly requested Mr Rakesh K. Sharma to grant no objection to it so that applicant could take necessary steps for the restoration and/or revival of the said IA no. 1061 of 2021. The relevant paragraph 25 is reproduced verbatim as under:

"25. Since the dismissal of the said I.A No. 1061 2021 on 8th November 2023, the applicant has regularly and repeatedly requested Mr Rakesh K. Sharma to grant "No Objection" to it, so that the Applicant could take necessary steps for the restoration and/or revival of the said I.A no. 1061 2021".

30. Thus, the applicant is aware about dismissal of the order from the date of pronouncement but has not filed the application for restoration within a period of 30 days for the reasons best known to its officials. Nothing prevented the applicant to apply for order for dismissal for default

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through its Authorised Officer/representative if its erstwhile Advocate was not issuing no objection certificate for more than seven and half months. It is an admitted fact that the applicant pursued with due diligence other pending applications No. 712 and 723 of 2023. It is also on record that the applicant has appeared through its Advocate in IA NO. 712/2013 and 723 of 2023.

31. Therefore, in view of the above, we do not find sufficient cause to restore the application no. IA/1061/IB/2023.
32. Accordingly, Restoration application IA 1570/2024 stands dismissed being devoid of merits.

Rekha Kantilal Shah
Member(Technical)

Labh Singh
Member(Judicial)

Order signed on this 13th day of November 2025