NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Insolvency) No. 283 of 2025

[Arising out of the Order dated 11.12.2024, passed by the 'Adjudicating Authority' (National Company Law Tribunal, Indore Bench, Madhya Pradesh in IA No. 195 (MP) of 2022 in Company Petition (MP) CP (IB) No. 1 of 2020)]

IN THE MATTER OF:

V-Con Integrated Solutions Pvt. Ltd.
Having its registered office at:
F-91, Industrial Area, Phase- 7,
Mohali, Punjab – 160055 **...Appellant**

Versus

M/s Shreeram Technology Services Pvt. Ltd.
Shop No. 109 Princes Skypark Building,
Vijay Nagar, Indore, Madhya Pradesh- 452010

Also at:
402, Old Palasia, Navneet Plaza, 5/2,
Greater Kailash Road, Indore,
Madhya Pradesh – 452001 **...Respondent**

Present:

For Appellant : Mr. Yashvardhan, Mr. Devesh Mohan, Mr. Gyanendra Shukla and Mr. Pranav Das, Advocates.

For Respondent : Mr. Rohit Dubey, Advocate

J U D G M E N T
(Hybrid Mode)

[Per: Arun Baroka, Member (Technical)]

The present Appeal is being filed under Section 61 of the Insolvency and Bankruptcy Code, 2016 ("the Code"), challenging the judgment dated 11.12.2024 passed by the Hon'ble National Company Law Tribunal, Indore Bench, Madhya Pradesh ("Hon'ble NCLT") in IA No. 195 (MP) of 2022 ("the

Restoration Application") in Company Petition (MP) CP (IB) No. 1 of 2020 ("the Petition") wherein the Hon'ble NCLT has rejected the Appellant's application seeking restoration of the petition filed by the Appellant under Section 9 of the Code.

2. The facts of the case which are relevant for this Appeal are as follows:

- IA No. 195 (MP)/2022 in CP (IB) No. 1 of 2020 was an application filed under Rule 11 of the NCLT Rules, 2016 was filed by the applicant – V-Con Integrated Solutions Pvt. Ltd.
- This IA was rejected and disposed of by the NCLT in its order dated 11.12.2024 against which this Appeal has been filed.

Submissions of the Appellant:

3. Main Company Petition (MP) CP (IB) No. 1 of 2020 was dismissed for non-prosecution by the Hon'ble NCLT on 25.03.2022**.** The dismissal was not on merits but solely due to the non-appearance of counsel.

4. Hon'ble NCLT, while dismissing the said petition had explicitly granted liberty to revive the petition, thereby indicating that restoration was permissible.

5. Failure of the erstwhile counsel to inform the appellant about the dismissal of the main application due to non-appearance or lack of prosecution cannot be attributed to any fault or negligence on the part of the appellant. Appellant had duly engaged a counsel (erstwhile counsel) to represent it in Company Petition (MP) CP (IB) No. 1 of 2020, and had taken all necessary steps from its end,

including the provision of documents, instructions, and regular follow-up. The Appellant remained under the bona fide belief that the said counsel was prosecuting the matter diligently, especially as the counsel had been regularly appearing before the Hon'ble NCLT prior to the outbreak of COVID-19 and had communicated previous updates. After the outbreak of COVID-19, the functioning of the Hon'ble NCLT was severely restricted, and physical appearances were limited. During this period, the Appellant made repeated attempts to contact the counsel for updates, but no information was furnished regarding any dismissal or default in appearance. Appellant first came to know about the dismissal of the Petition only on 28.07.2022, while preparing a status report of pending cases, which clearly indicates the lack of communication from the side of the erstwhile counsel.

6. No litigant should suffer for the fault or omission of their advocate, especially when they have acted in good faith. In the present case, the Appellant had taken all reasonable steps to ensure representation and prosecution of his matter and cannot be held responsible for the nonappearance or default of counsel. Thus, the rejection of the restoration application on the ground of delay, without appreciating that there was no fault of the Appellant and without giving an opportunity to explain the circumstances, is perverse and suffers from non-application of mind.

7. A litigant who has entrusted his case to his lawyer cannot be penalized for lapse or negligence of his lawyer. In the present case the Appellant is not a lawyer

or a legal professional, but a service provider in the telecom/ messaging domain, who relied entirely on the professional assistance of his counsel to prosecute the Company Petition before the Hon'ble NCLT.

8. It is unjust to penalize a litigant for something beyond his control, such as advocate's non-appearance or default in prosecution. Technicalities should not override substantial justice, especially where the cause shown is bona fide and supported by material facts. While deciding a restoration application liberal approach has to be adopted.

9. Appellant places its reliance upon the following judgments:

a) **Rafiq & Anr. v. Munsilal & Anr.,** 1981 (2) SCC 788.

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3. *The disturbing feature of the case is that under our present adversary legal system where the parties generally appear through their advocates, the obligation of the parties is to select his advocate, brief him, pay the fees demanded by him and then trust the learned advocate to do the rest of the things. The party may be a villager or may belong to a rural area and may have no knowledge of the court's procedure. After engaging a lawyer, the party may remain supremely confident that the lawyer will look after his interest. At the time of the hearing of the appeal, the personal appearance of the party is not only not required but hardly useful. Therefore, the party having done everything in his power to effectively participate in the proceedings can rest assured that he has neither to go to the High Court to inquire as to what is happening in the High Court with regard to his appeal nor is he to act as a watchdog of the advocate that the latter appears in the matter when it is listed. It is no part of his job. Mr. A.K. Sanghi stated that a practice has grown up in the High Court of Allahabad amongst the lawyers that they remain absent when they do not like a particular Bench. Maybe he is better informed on this matter. Ignorance in this behalf is our bliss. Even if we do not put our seal of imprimatur on the alleged practice by dismissing this matter which may discourage such a tendency, would it not bring justice delivery system into disrepute. What is the fault of the party who having done everything in his power and*

expected of him would suffer because of the default of his advocate. If we reject this appeal, as Mr. A.K. Sanghi invited us to do, the only one who would suffer would not be the lawyer who did not appear but the party whose interest he represented. The problem that agitates us is whether it is proper that the party should suffer for the inaction, deliberate omission, or misdemeanour of his agent. The answer obviously is in the negative. Maybe that the learned advocate absented himself deliberately or intentionally. We have no material for ascertaining that aspect of the matter. We say nothing more on that aspect of the matter. However, we cannot be a party to an innocent party suffering injustice merely because his chosen advocate defaulted. Therefore, we allow this appeal, set aside the order of the High Court both dismissing the appeal and refusing to recall that order. We direct that the appeal be restored to its original number in the High Court and be disposed of according to law. If there is a stay of dispossession it will continue till the disposal of the matter by the High Court. There remains the question as to who shall pay the costs of the respondent here. As we feel that the party is not responsible because he has done whatever was possible and was in his power to do, the costs amounting to Rs.200/- should be recovered from the advocate who absented himself. The right to execute that order is reserved with the party represented by Mr. A.K.Sanghi.

b) **Smt. Lachi Tewari & Ors. v. Director of Land Records & Anr.**, 1984 (Supp) SCC 431.

4. The mere narration of facts would suffice to focus attention on what point is involved in this appeal. The petitioner obtained rule nisi in 1976 and waited for 7 years for its being heard. Suddenly one day the High Court consistent with its calender fixed the matter for hearing on April 21, 1983. The petitioner had taken extra caution to engage three learned Counsels. We fail to see what more can be expected of him. Further we fail to understand what more steps should have taken in the matter to avoid being thrown out unheard. In Rafiq and Anr. v. Munshilal and Anr. this Court succinctly brought out this aspect. Says the Court:

The disturbing feature of the case is that under our present adversary legal system where the parties generally appear through their advocates, the obligation of the parties is to select his advocate, brief him, pay the fees demanded by him and then trust the learned advocate to do the rest of the things. The party may be a villager or may belong to a rural area and may have no knowledge of the court's procedure.

After engaging a lawyer, the party may remain supremely confident that the lawyer will look after his interest. At the time of healing of the appeal, the personal appearance of the party is not ony not required but hardly useful. Therefore, the party having done everything in his power to effectively participate in the proceedings can rest assured that he has neither to go to the High Court to inquire as to what is happening in the High Court with regard to his appeal nor is he to act as a watchdog of the advocate that the latter appears in the matter when it is listed. It is no part of his job.

Again in Goswami Krishna Murarilal Sharma v. Dhan Prakash and Ors. this Court reiterated this very principle. And that squarely applies to the facts of this case. On this short ground we allow this appeal, set aside the order of the High Court dated April 21, 1983 as also the order refusing to recall the earlier order dated May 2, 1983 and restore the civil rule to the file of the High Court to be disposed of by the High Court on merits consistent with its calender.

c) **Sunita v. Lalit Sansawal** in 2024: DHC: 4984, Judgment dated 05.07.2024 passed by the Hon'ble High Court of Delhi

7. *Learned Trial Court has given cogent reasons while restoring the petition. It was very much conscious of the fact that the applicant had not come up with the requisite reason but keeping in mind the overall facts and instead of taking a hyper-technical view and while taking note of the precedents that such restoration application should be dealt with liberally as right to represent one's cause before the court is a fundamental one, the application was allowed and the petition was restored to its original number and position.*

d) **M/s Lok Sewak Leasing & Investment Pvt. Ltd. v. M/s GBL Chemical Ltd.**, Comp. App. (AT) (Ins.) No. 483 of 2025

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.*

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.*

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.*

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.*
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10. Rule 15 of the NCLT Rules, 2016 itself empowers the Hon'ble NCLT to extend the time prescribed for filing of a restoration application even after the expiry of 30 days and without an application seeking condonation of delay. Thus,

application for condonation of delay is not mandatory under NCLT rules, 2016, which empowers the Hon'ble NCLT to extend the time for filing restoration application, even after the expiry of 30 days.

11. Rule 48 of the NCLT Rules, 2016 also does not mandate filing of an application seeking condonation of delay in case there is delay in filing the restoration application.

12. Rule 153 of the NCLT Rules, 2016 also have similar position.

13. Section 5 of the Limitation Act, 1963 does not mandate the filing of a formal written application for condonation of delay. The provision merely empowers the Court or Tribunal to condone delay if sufficient cause is shown, and this discretion has been upheld by the Hon'ble Supreme Court of India in various judgments.

14. Rules 15 and 48(2) of the NCLT Rules, 2016 do not stipulate any mandatory requirement for a written application for seeking extension of time or condonation of delay. If the legislature intended for a written application to be mandatory, it would have been expressly provided under the said rules. In the absence of such an express requirement, Appellant's oral request for condonation of delay ought to have been considered and allowed by the Hon'ble NCLT.

15. Thus, the main contention advanced by the Respondent that filing of a separate application seeking condonation of delay is a mandatory requirement, is wholly misconceived and misplaced.

16. Appellant places its reliance upon the following judgments:

a) **Sesh Nath Singh & Anr. v. Baidyabati Sheoraphuli Co-operative Bank Ltd. & Anr.**, (2021) 7 SCC 313.

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> *61. Section 5 of the Limitation Act, 1963 does not speak of any application. The Section enables the Court to admit an application or appeal if the applicant or the appellant, as the case may be, satisfies the Court that he had sufficient cause for not making the application and/or preferring the appeal, within the time prescribed. Although, it is the general practice to make a formal application under Section 5 of the Limitation Act, 1963, in order to enable the Court or Tribunal to weigh the sufficiency of the cause for the inability of the appellant/applicant to approach the Court/Tribunal within the time prescribed by limitation, there is no bar to exercise by the Court/Tribunal of its discretion to condone delay, in the absence of a formal application.*
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> *62. A plain reading of Section 5 of the Limitation Act makes it amply clear that, it is not mandatory to file an application in writing before relief can be granted under the said section. Had such an application been mandatory, Section 5 of the Limitation Act would have expressly provided so. Section 5 would then have read that the Court might condone delay beyond the time prescribed by limitation for filing an application or appeal, if on consideration of the application of the appellant or the applicant, as the case may be, for condonation of delay, the Court is satisfied that the appellant/applicant had sufficient cause for not preferring the appeal or making the application within such period. Alternatively, a proviso or an Explanation would have been added to Section 5, requiring the appellant or the applicant, as the case may be, to make an application for condonation of delay. However, the Court can always insist that an application or an affidavit showing cause for the delay be filed. No applicant or appellant can claim condonation of delay under Section 5 of the Limitation Act as of right, without making an application.*

b) **Vamsidhar Maddipatla & Anr. v. Teckbond Laboratories Pvt. Ltd. & Ors.**, 2017 SCC OnLine NCLAT 604

3. Neither the Petitioners nor any of their representatives were present. Shri Ramachandra Rao Gurram, appearing for Caveator (Respondent No. 2) is present and accepts notice. The case was again listed on 03.02.2017. On this date also, none appears for Petitioner and only Sh Ramachandra Rao Gurrm was present. So the case was posted for dismissal on 09.02.2017. Today also, the Petitioners nor any of their representatives appears when the case was called twice. Shri Ramachandra Rao Gurram is present.

4. The above circumstances clearly show that the Petitioner is not interested to prosecute the case. In these circumstances, we have no alternative except to dismiss the present Company Petition for default. CP No. 5/241/HDB/2016 is dismissed for non-prosecution. No order as to costs.

2. *Being aggrieved the appellant preferred a petition for restoration under Section 241, read with Rule 48 and 11 of NCLT Rules, 2016. The Tribunal vide a detailed order dated 11.09.2017 refused to restore the Company Petition which reads as follows:*

> *"**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 case for his non-appearance when the petition or the application was called for hearing, the Tribunal shall make an order for restoring the same**:*
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> ***Provided that where the case was disposed of on merits the decisions shall not be re-opened**.*
>
> ***Rule 11 deals with inherent power of the Tribunal**.*
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> ***The above Rule clearly states that the Tribunal is empowered to restore the petition which is dismissed for default if appropriate application is filed within 30 days from the date of order provided Tribunal is satisfied with the cause shown by the party for his non-appearance**."*

3. *The Tribunal observed that the application was not filed within 30 days from the date of dismissal and no petition for condonation was filed.*

4. *On notice the respondent have appeared and opposed the appeal on similar pleas which has been recorded by the Tribunal as noticed above.*

5. *From the record we find that the order of dismissal for non-prosecution was passed on 09.02.2017 and the Restoration Petition was filed on 29.6.2017.*

6. *Learned counsel for the appellant referred to Rule 15 of NCLT Rules, 2016 which reads as follows:*

> *"**15 Power to extend time. The Tribunal may extend the time appointed by these rules or fixed by any order, for doing any act or taking any proceeding, upon such terms, if any, as the justice of the case may require, and any enlargement may be ordered, although the application therefore, is not made until after the expiration of the time appointed or allowed**."*

7. *From the said Rules, we find that the Tribunal has power to extend the time appointed by the rules or fixed by any order for doing any act or taking any proceedings, upon such terms, if any, as the justice of the case may be required, although the application is not made until after the expiry of the time appointed or allowed.*

8. *Having heard the Learned counsel for the parties, we are of the view that it was always open to the Tribunal to extend the time appointed/fixed by the Rules and the Tribunal was empowered to restore the application in the interest of justice upon the such terms and conditions as may be imposed by the Tribunal.*

9. *Having heard learned counsel for the parties and taking into consideration the relevant facts and circumstances of the case, we are of the view that the appellant has made out a case for restoration, which the Tribunal itself could have done by extending the time under Rule 45 of NCLT Rules, 2016 on certain terms and conditions such as by imposing cost on the appellant.*

10. *For the reasons aforesaid we set aside the impugned order dated 11.9.2017 passed by Tribunal in CA No. 128 of 2017 and the order dated 9.2.2017 passed in Company Petition No. 5/241/HDB/2016 and restore the Company Petition No. 5/241/HDB/2016 to its original file subject to the payment of cost of Rs. 30000/- to be paid by the appellant in favour*

of the Registrar, National Company Law Appellate Tribunal, New Delhi by bank draft by 30th November, 2017. On failure this order shall stand recalled. The appeal is allowed with the aforesaid observations and directions."

c) M.C. Davar Holdings Pvt. Ltd. v. Aurosagar Estates Pvt. Ltd. & Ors., 2017 SCC OnLine 2139.

6. By the order of the NCLAT impugned in the present petition, the NCLT's order was set aside. The NCLAT found that the amendment sought was with regard to a fresh cause of action which took place more than three years before, namely on 15th December, 2012, and since this would be barred by limitation, the Tribunal was not competent to allow the amendment. In doing so, the NCLAT also referred to Rule 155 of the NCLT Rules and Section 422 of the Act stating that the period of 30 days given by Rule 155 was sacrosanct inasmuch as the main petition itself had to be decided under Section 422 of the Act within a period of three months.

7. Having heard learned counsel for the parties, we are of the view that the NCLAT's order is not correct. First and foremost, it is important to extract Rules 153 and 155 of the NCLT Rules which are set out herein-below: —

> *"153. Enlargement of time. - Where any period is fixed by or under these rules, or granted by the Tribunal for the doing of any act, or filing of any document or representation, the Tribunal may, in its discretion from time to time in the interest of justice and for reasons to be recorded, enlarge such period, even though the period fixed by or under these rules or granted by the Tribunal may have expired. ……..*
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> *155. General power to amend. - The Tribunal may, within a period of thirty days from the date of completion of pleadings, and on such terms as to costs or otherwise, as it may think fit, amend any defect or error in any proceeding before it; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on such proceeding."*

8. It is clear on a reading of the aforesaid Rules that the period of 30 days from the date of completion of pleadings is not sacrosanct inasmuch as under Rule 153, the Tribunal may, in its discretion, in the interests of justice and for reasons to be recorded, enlarge such period

even though the period fixed has expired. Of course, this has to be done keeping in mind the time period fixed by Section 422 of the Act.

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17. Thus, there is no statutory mandate under the Limitation Act, 1963 or the NCLT Rules, 2016, requiring a formal application for condonation of delay, and this Hon'ble Tribunal is vested with inherent powers to extend time.

18. NCLT has erroneously rejected the Appellant's restoration application merely on the ground that it was filed beyond the 30-day period under Rule 11 and without a condonation of delay application, which is contrary to the aforementioned judgment and also against the provisions of Rules 15, 48 and 153 of the NCLT Rules, 2016.

19. Accordingly, the impugned order dated 11.12.2024 is liable to be set aside.

20. The delay was only of 111 days, which occurred solely because the Appellant was unaware of the dismissal order dated 25.03.2022 until 28.07.2022 due to lapses on the part of the erstwhile counsel. Immediately thereafter, the restoration application was filed by the Appellant, wherein the Appellant had duly provided sufficient and bona fide cause for the said delay, supported by settled law that a litigant should not suffer for the defaults of counsel and that length of delay is immaterial when the explanation is acceptable. However, the Hon'ble NCLT has failed to appreciate these aspects

and dismissed the application mechanically, without exercising its powers under Rule 15 and Rule 11 of the NCLT Rules, 2016.

21. Reliance is placed upon the following judgments:

a) N **Balakrishnan v. M. Krishnamurthy,** (1998) 7 SCC. 123

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9. Rule of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. the object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim Interest reipublicae up sit finis litium (it is for the general welfare that a period be putt to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

b) Inder Singh v. State of Madhya Pradesh,
(2025) SCC OnLine SC 600 (para **10,11,** 15, 16 & 18)

10. It is submitted that the call off of two months in 12 months and 03 years as the case may be, is in breach of the orders passed in the Homeguard Sainik Evam Pariwar Kalyan Sangh (supra)by this court. It is contended that on account of the Call off, the Home Guard remain unemployed for two months and that the Rule 27 (1) (c) is violative of Article 14, 16, 19(1)(b) and 21 of the Constitution of India.

11. It is also contended on behalf of the Petitioners that Section 7(2) of the Act, has become unconstitutional by efflux of time as the rationale and determining principle used at the time of its enactment is no longer reasonable. It is submitted that at the time when the said provision was enacted, State Government did not need the Home Guards as a full time force and they were raised and called put specifically for occasions

such as emergencies, Simhastha mela etc. however, in the present days, the state government requires and is using the services of Home Guards on a full time basis. This is fortified by the fact that they are to be on call out duty for 34 months out of 36 and to ensure their availability respondents have directed that 90% of the sanctioned strength is always at work and only 10% are to be called off as per roster.

15. It is submitted that the voluntary Home Guard can surrender the certificate and when the voluntary Home Guard is not engaged in duty or training, then he/she can engage in any other employment, not in conflict with the interest of the department. Thus the service conditions are strictly not governed as per a regular government servant.

16. It is contended that there is a presumption in favour of the constitutionality and validity of a subordinate legislation and the burden is upon him who attacks the validity. It is further contended, that the call out is a policy decision and it is not for the courts to consider the relative merits of different economic policies and consider whether a wiser or better one can be evolved. For testing the correctness of a policy, the appropriate forum is the Parliament and not the Courts. It is thus submitted that the Petitioners are not entitled to be equated with the Police Constables or personnel and cannot claim parity with pay or scales of pay as provided to Police Personnel.

18. Challenge has thus been made to the validity of Section 7(2) and 7 (2A) of the Act and Rules 27(1)(a), 27(1)(c), 27(2)(d) and 27(4) of the Rules. Petitioners/Appellants have also sought regularization of their service and to treat the Home Guards as equal to other employees in the Police Departments and to treat them as permanent employees and to grant consequential benefits as that of regular employees. Further, retirement age enhancement has been sought till the age of 62 years. We may note that in some of the petitions that were filed prior to the amendment of the Rules in 2017, the age enhancement is sought till the age of 60 years. The 2017 amendment has enhanced the age to 60 years.

b) **M.K. Prasad v. P. Arumugam,** (2001) 6 SCC 176 (para 9 & 11)

9. Again in The State of West Bengal v. The Administrator, Howrah Municipality & Ors. [1972 (1) SCC 366 and G.Ramegowda, Major & Ors. v. Special Land Acquisition Officer, Bangalore [1988 (2) SCC 142 this Court observed that the expression "sufficient cause" in Section

5 of the Limitation Act must receive a liberal construction so as to advance substantial justice and generally delays be condoned in the interest of justice where gross negligence or deliberate inaction or lack of bonafide is not imputable to the party seeking condonation of delay. Law of limitation has been enacted to serve the interests of justice and not to defeat it. Again in N. Balakrishnan v. M.Krishnamurthy [1998 (7) SCC 123] this Court held that acceptability of explanation for the delay is the sole criterion and length of delay is not relevant. In the absence of anything showing malafide or deliberate delay as a dilatory tactics, the court should normally condone the delay. However, in such a case the court should also keep in mind the constant litigation expenses incurred or to be incurred by the opposite party and should compensate him accordingly. In that context the court observed:

> *"It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court."*

11. In the instant case, the appellant tried to explain the delay in filing the application for setting aside the ex-parte decree as is evident from his application filed under Section 5 of the Limitation Act accompanied by his own affidavit. Even though the appellant appears not to be as vigilant as he ought to have been, yet his conduct does not, on the whole, warrant to castigate him as an irresponsible litigant. He should have been more vigilant but on his failure to adopt such extra vigilance should not have been made a ground for ousting him from the litigation with respect to the property, concededly to be valuable. While deciding the application for setting aside the ex-parte decree, the court should have kept in mind the judgment impugned, the extent of the property

involved and the stake of the parties. We are of the opinion that the inconvenience caused to the respondent for the delay on account of the appellant being absent from the court in this case can be compensated by awarding appropriate and exemplary costs. In the interests of justice and under the peculiar circumstances of the case we set aside the order impugned and condone the delay in filing the application for setting aside ex-parte decree. To avoid further delay, we have examined the merits of the main application and feel that sufficient grounds exist for setting aside the ex-parte decree as well.

Consequently, the appeal is allowed by setting aside the orders impugned. The appellant's application for condoning the delay and for setting aside the ex-parte decree shall stand allowed subject to payment of exemplary costs of Rs.50,000/- to be paid to the opposite side within a period of 30 days. If the costs are not paid within the time specified, this appeal shall be deemed to have been dismissed and the ex-parte decree passed against the appellant revived. We may clarify that the costs awarded by this order are in addition to the amount of Rs.10,000/- deposited in this Court for payment to the respondent vide order dated 3.11.2000.

c) **Collector, Land Acquisition, Anantnag & Ors. v. I Catiji & Ors.,** (1987) 2 SCC 107(para 3)

3. Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

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22. Reliance is placed upon the judgment of ***Sesh Nath Singh & Anr. v. Baidyabati Sheoraphuli Co-operative Bank Ltd. & Anr.***, (2021) 7 SCC 313. (para 59 & 60).

23. Nomenclature of the provision invoked was wholly inconsequential and cannot be a ground to dismiss any petition / application. A wrong reference to a provision of law or the nomenclature under which a petition / application was filed did not by itself render the proceedings invalid, if the relief sought could otherwise be justified under the legal framework.

24. The entire lis of the Appellant ought not to be shut out due to default of the counsel, otherwise the meritorious case of the Appellant will be dismissed on mere technicality and not on merits. Reliance is placed upon the following judgments:

a) **Rafiq & Anr. v. Munsilal & Anr.,** 1981 (2) SCC 788. **(Supra)**

b) **Smt. Lachi Tewari & Ors. v. Director of Land Records & Anr.,** 1984 (Supp) SCC 431. (para 4) **(Supra)**

c) Judgment dated 05.07.2024 passed by the Hon'ble High Court of Delhi in **Sunda v. Lalit Sansawal** in 2024: DHC:4984. (para 7) **(Supra)**

d) **M/s Lok Sewak Leasing & Investment Pvt. Ltd. v. M/s GBL Chemical Ltd.,** Comp. App. (AT) (Ins.) No. 483 of 2025. (para 6, 7, 8, 17, 20, 35 and 39) **(Supra)**

25. Reliance placed by the Respondent on the case of ***Rudra Mercantile Pvt. Ltd. v. Swastik Metaforge Pvt. Ltd***. in Company Appeal (AT) (Ins) No. 719 of 2023 & IA No. 2396 of 2023 is completely misplaced and inapplicable to the

facts of the present case. Even this judgment does not lay down any mandatory requirement for filing a separate application seeking condonation of delay.

26. Respondent's reliance on **R Mall Developers Pvt. Ltd. v. Lemon Chilli Veg Gourmet Foods LLP,** 2025 SCC OnLine NCLAT 1544, is wholly misconceived and clearly distinguishable on facts. **In R Mall Developers (Supra),** the Hon'ble Tribunal recorded that the main Company Petition itself was dismissed for non-prosecution, the first Restoration Application was again dismissed for non-appearance, and the second Restoration Application was also filed belatedly along with a delayed condonation application, thereby showing a consistent pattern of gross negligence, repeated defaults, and lack of bona fide intent on the part of the litigant. In stark contrast, in the present case, there is no repeated default or pattern of negligence. The Appellant filed the Restoration Application immediately upon gaining knowledge of the dismissal order and has acted diligently and bona fide at all stages. The delay is minimal, properly explained, and not deliberate. Therefore, the ratio of ***R Mall Developers (Supra)*** is wholly inapplicable to the present case, and the Respondent's reliance thereon is entirely misplaced. Therefore, the present case deserves a liberal approach in consonance with the law laid down by the Hon'ble Supreme Court and this Hon'ble Tribunal.

27. Relying on the above judgment, the appellant claims that even without an application seeking condonation of delay, this Tribunal has allowed the

extension in **Vamsidhar Maddipatla & Anr. Versus Teckbond Laboratories Pvt. Ltd. & Ors., 2017 SCC OnLine NCLAT 604.** The relevant extract of the judgment is as follows:

> ***
>
> 3. The Tribunal observed that the application was not filed within 30 days from the date of dismissal and no petition for condonation was filed.
>
> XXX
>
> 5. From the record we find that the order of dismissal for non-prosecution was passed on 09.02.2017 and the Restoration Petition was filed on 29.6.2017.
>
> 6. Learned counsel for the appellant referred to Rule 15 of NCLT Rules, 2016 which reads as follows: "15 Power to extend time. The Tribunal may extend the time appointed by these rules or fixed by any order, for doing any act or taking any proceeding, upon such terms, if any, as the justice of the case may require, and any enlargement may be ordered, although the application therefore, is not made until after the expiration of the time appointed or allowed."
>
> 7. From the said Rules, we find that the Tribunal has power to extend the time appointed by the rules or fixed by any order for doing any act or taking any proceedings, upon such terms, if any, as the justice of the case may be required, although the application is not made until after the expiry of the time appointed or allowed.
>
> 8. Having heard the Learned counsel for the parties, we are of the view that it was always open to the Tribunal to extend the time appointed/fixed by the Rules and the Tribunal was empowered to restore

the application in the interest of justice upon the such terms and conditions as may be imposed by the Tribunal.

9. Having heard learned counsel for the parties and taking into consideration the relevant facts and circumstances of the case, we are of the view that the appellant has made out a case for restoration, which the Tribunal itself could have done by extending the time under Rule 45 of NCLT Rules, 2016 on certain terms and conditions such as by imposing cost on the appellant.

10. For the reasons aforesaid we set aside the impugned order dated 11.9.2017 passed by Tribunal in CA No. 128 of 2017 and the order dated 9.2.2017 passed in Company Petition No. 5/241/HDB/2016 and restore the Company Petition No. 5/241/HDB/2016 to its original file subject to the payment of cost of Rs. 30000/- to be paid by the appellant in favour of the Registrar, National Company Law Appellate Tribunal, New Delhi by bank draft by 30 November, 2017. On failure this order shall stand recalled. The appeal is allowed with the aforesaid observations and directions.

***

28. Appellant also claims that the Hon'ble Supreme Court in the case of **Sesh Nath Singh & Anr. Versus Baidyabati Sheoraphuli Co-operative Bank Limited & Anr., (2021) 7 SCC 313** has held that Section 5 of the Limitation Act, 1963 does not speak of any application and the said section does not bars the tribunal of its discretion to condone delay, in the absence of any formal application.

Submissions of the Respondent

29. The company petition CP (IB) No. 1 of 2020 filed by the Appellant under Section 9 of the IBC was disposed of by Ld. Hon'ble National Company Law

Tribunal, Indore Bench vide order dated 25.03.2022, wherein it was observed that the said petition was disposed of owing to non-prosecution of the petition by the Appellant for a period of around 6 months. After such disposal on 25,03.2022, the Appellant had filed an Application bearing number IA No. 195 (MP) of 2022 before Ld. Hon'ble National Company, Law Tribunal, Indore Bench, seeking restoration of the "main company petition", after more than 5 months.

30. The dismissal of the restoration application in impugned order, is on two fronts. One, the Ld. AA had categorically found that the restoration application had been filed after lapse of mandatory time period of 30 days. And second that the reason specified by the Appellant being negligence of the counsel, in not a cogent reason to permit restoration.

31. The Impugned order is in consonance to the provisions enshrined under Rule 48(2) of the NCLT Rules, 2016, as the Appellant had filed the said restoration application much beyond the prescribed timeline of 30 days. Moreover, the reason given by the Appellant are not cogent.

32. Respondent herein relies on the judgment passed by this Hon'ble NCLAT in **Rudra Mercantile Pvt. Ltd. vs. Swastik Metaforge Pvt. Ltd. [Company Appeal (AT) (Ins.) No. 719 of 2023** & IA No. 2396 of 2023] (para 3, 4, 5 and 6), which is a case with exactly same facts (i.e. delay in filing restoration application, reason given were of negligence of earlier counsel and no condonation application

filed along with the restoration application) has rejected the reason of "earlier counsel did not inform the Petitioner" and held that to be not satisfactory either for restoration or for delay in filing restoration application.

33. The same finding has been reconfirmed by the Hon'ble NCLAT in **R Mall Developers Pvt. Ltd. v. Lemon Chilli Veg Gaurmet Foods LLP [CA(AT) (Insolvency) No. 527 of 2025.**

34. Regarding the inherent discretionary powers of the Court to allow the restoration of the petition even without the application seeking condonation of delay, the Respondent relies on judgement of the Hon'ble **Supreme Court of India in GLAS Trust Company LLC vs. BYJU Raveendran & Ors. [Civil Appeal No. 9986 of 2024]**, wherein the Hon'ble Court in para no. 67 to 71 observed that- *"inherent powers' may be exercised in cases where there is no express provision under the legal framework. However, such powers cannot be exercised in contravention of, conflict with or in ignorance of express provisions of law."*

35. Thus, there is no valid reason for revival of the main company petition bearing no. CP (IB) 1 of 2020 of the Appellant.

36. As a matter of fact, the debt claimed by the Appellant is totally disputed and even the main company petition also mentions that the claims raised as an operational debt has been a pre-existing dispute. Regardless of the order dated 11.12.2024 disposing the restoration application and the order dated 25.03.2022 disposing the main company petition, had the matter been

perused by the Hon'ble Tribunal, the said company petition of the Appellant bearing number CP (IB) 1 of 2020 is prima-facie liable to be dismissed on the merits of the case, for the reason of pre-existing dispute between the parties.

37. The present Reply is filed for the limited purpose for opposing the maintainability of the present Appeal.

38. The present appeal is not maintainable and hence liable to be dismissed.

Appraisal

39. We have heard the counsels of both sides and also perused the materials placed on record.

40. The Appellant claims that they filed a Restoration Application on 13.08.2022 under Rule 11 of the NCLT Rules, 2016 for seeking restoration of the main petition i.e. (MP) CP (IB) No. 1 of 2020 filed under Section 9 of the Code. The reasons claimed for restoration of the main petition was that the erstwhile counsel had not informed them about the none appearance and counsels' inability to appear before the Adjudicating Authority due to ill health of her family members on account of Covid-19. Reasons cited by the Appellant are at page 119 APB and are reproduced as follows:

> "....
> 3. That it is submitted that the present petition was filed by the Operational Creditor through its counsel, who was appearing in the said matter regularly. The Ld. Counsel engaged by the Operational Creditor was also providing regular updates regarding the matter till the onset of the

Covid-19 pandemic. Thereafter, the matters were not being listed regularly due to restricted functioning of the Hon'ble Tribunal. However, since the Operational Creditor had engaged the Ld. Counsel to prosecute the instant matter, the Operational Creditor was under an impression that the erstwhile counsel was taking necessary steps to prosecute the captioned petition and was regularly appearing before this Hon'ble Tribunal.

4. That however, it was only on 28-July-2022 that while preparing the status report of the matters of the Operational Creditors pending before various forums that the Operational Creditor got to know that the captioned petition has been dismissed vide order dated 25.03.2022 of this Hon'ble Tribunal. The inability of the erstwhile counsel to pursue the captioned matter was never informed to the Operational Creditor by the erstwhile counsel and therefore, it was under a bonafide impression that the erstwhile counsel is pursuing the captioned matter and is appearing regularly before this Hon'ble Tribunal. It is also pertinent to mention herein that the Operational Creditor had also tried to contact the erstwhile counsel on multiple occasions to enquire about the status of the captioned matter however, no response was received from the erstwhile counsel.

5. That subsequently, it was revealed that the erstwhile counsel could not appear on the last few dates due to ill health of her family members on account of Covid-19.

6. Therefore, it is submitted that the non-appearance of the Operational Creditor before, this Hon'ble Tribunal was neither intentional nor deliberate and the same had occurred only due to the facts stated hereinabove."

41. In this case the several Rules of National Company Law Tribunal Rules, 2016 have been cited by both sides for furthering their case. They are noted as below:

> **11. Inherent Powers. -** Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal.
>
> 15. **Power to extend time**. The Tribunal may extend the time appointed by these rules or fixed by any order, for doing any act or taking any proceeding, upon such terms, if any, as the justice of the case may require, and any enlargement may be ordered, although the application therefore is not made until after the expiration of the time appointed or allowed.
>
> **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"
>
> **153. Enlargement of time. -** Where any period is fixed by or under these rules, or granted by Tribunal for the doing of any act, or filing of any document or representation, the Tribunal may, in its discretion from time to time in the interest of justice and for reasons to be recorded, enlarge such period, even though the period fixed by or under these rules or granted by the Tribunal may have expired.

42. Appellant has relied on Section 5 of the Limitation Act, 1963, which is also reproduced herein:

> **"5. Extension of prescribed period in certain cases**. —Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.
>
> Explanation. —The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section."

43. Appellant contends that there is no statutory mandate under the Limitation Act, 1963 or the NCLT Rules, 2016, requiring a formal application for condonation of delay, and this Hon'ble Tribunal is vested with inherent powers to extend time. Rejecting the Appellant's restoration application merely on the ground that it was filed beyond the 30-day period under Rule 11 and without a condonation of delay application, is claimed to be contrary to the provisions of Rules 15, 48 and 153 of the NCLT Rules, 2016.

44. Respondent i.e. M/s Shreeram Technology Services Pvt. Ltd. vehemently opposes the restoration, relying heavily on Rule 48 which is noted herein earlier. We observe that Sub-rule (2) of Rule 48 clearly provides that the application in respect of restoration / revival of the petition, which has already been dismissed on account of non-appearance of the applicant must be filed within 30 days from the date of dismissal of the petition along with sufficient cause of non-appearance when the petition was called for hearing. In this case the petition was disposed of on 25.03.2022 on account of multiple non-appearances. And the instant interlocutory application in respect of seeking revival of disposed of

petition was filed on 13.08.2022 with a delay of about five months. We observe that the petition of the Applicant under Section 9 of the IBC was disposed of after AA noted non-prosecution on behalf of the Applicant for a period around 6 months. Even after such disposal on 25.03.2022, the Applicant had come up before NCLT seeking revival of the disposed of petition, after more than 5 months. We note that the instant application doesn't stand in consonance with the provisions enshrined under Rule 48 of the NCLT Rules.

45. We also note that time is of the essence in insolvency proceedings and the appellant could not have been lax in his appeal. Before its dismissal and thereafter for restoration, the appellant has not been vigilant enough and he cannot take refuge that the Advocate appearing on his behalf did not brief him about the proceedings. This cannot be a sufficient cause for condonation of delay. We find that the combined reading of various statutory provisions shows that there has to be sufficient cause in some form and not necessarily in the form of formal delay condonation application. And in this case we find the cause on placed record and in submissions is not sufficient for the condonation of delay beyond 30 days for restoration of the petition which was dismissed for non-prosecution.

46. We also note that *"inherent powers' may be exercised in cases where there is no express provision under the legal framework. However, such powers cannot be exercised in contravention of, conflict with or in ignorance of express provisions*

of law". While explaining the scope of 'Inherent Powers' Under Rule 11 the Hon'ble Supreme Court has observed as follows:

> ***
> 69. In a consistent line of precedent, this Court has held that 'inherent powers' may be exercised in cases where there is no express provision under the legal framework. However, such powers cannot be exercised in contravention of, conflict with or in ignorance of express provisions of law. We may helpfully refer to the observations of a two-judge bench of this Court in one such case. In Ram Chand and Sons Sugar Mills (P) Ltd. v. Kanhayalal Bhargava, a two-judge bench of this Court, speaking through Justice K. Subba Rao (as the learned chief Justice then was), opined:
>
> > 5. ... Having regard to the said decisions, the scope of the inherent power of a court Under Section 151 of the Code may be defined thus: The inherent power of a court is in addition to and complementary to the powers expressly conferred under the Code. But that power will not be exercised if its exercise is inconsistent with, or comes into conflict with, any of the powers expressly or by necessary implication conferred by the other provisions of the Code. If there are express provisions exhaustively covering a particular topic, they give rise to a necessary implication that no power shall be exercised in respect of the said topic otherwise than in the manner prescribed by the said provisions. Whatever limitations are imposed by construction on the provisions of Section 151 of the Code, they do not control the undoubted power of the Court conferred Under Section 151 of the Code to make a suitable order to prevent the abuse of the process of the Court.
> >
> > (emphasis supplied)
>
> 70. When a procedure has been prescribed for a particular purpose exhaustively, no power shall be exercised otherwise than in the manner prescribed by the said provisions. In such cases, the court must be circumspect in invoking its 'inherent powers' to deviate from the prescribed procedure. If such deviation is made, the court must justify why this was necessary to "prevent the abuse of the process of the Court".
>
> 71. The need to be circumspect while invoking "inherent powers", when there is an exhaustive legal framework is amplified in the context of a

legislation like the IBC. In Ebix Singapore (P) Ltd. v. Educomp Solutions Ltd. (CoC), 2021: INSC:468: (2022) 2 SCC 401 a two- judge bench of this Court, speaking through one of us (D.Y. Chandrachud, J.), affirmed this position and observed as follows:

> Any claim seeking an exercise of the adjudicating authority's residuary powers Under Section 60(5)(c) IBC, NCLT's inherent powers Under Rule 11 of the NCLT Rules or even the powers of this Court Under Article 142 of the Constitution must be closely scrutinized for broader compliance with the insolvency framework and its underlying objective. The adjudicating mechanisms which have been specifically created by the statute, have a narrowly defined role in the process and must be circumspect in granting reliefs that may run counter to the timeliness and predictability that is central to the IBC. Any judicial creation of a procedural or substantive remedy that is not envisaged by the statute would not only violate the principle of separation of powers, but also run the risk of altering the delicate coordination that is designed by the IBC framework and have grave implications on the outcome of the CIRP, the economy of the country and the lives of the workers and other allied parties who are statutorily bound by the impact of a resolution or liquidation of a Corporate Debtor.
>
> (emphasis supplied)

***

47. We find that in the instant case the instant restoration petition is not permissible under Rule 48(2) of NCLT Rules 2016. Thus, as per the ruling **GLAS Trust Company LLC [Civil Appeal No. 9986 of 2024]** inherent powers (e.g., Rule 11 or 15) cannot override other express statutory provisions under Rule 48(2). Thus, we find that the Rule 11 or Rule 15 cannot be invoked to bypass the 30-day limit under Rule 48(2) in this case.

48. The Respondent also relies upon the judgment of Hon'ble NCLAT in **Rudra Mercantile Pvt. Ltd. v. Swastik Metaforge Pvt. Ltd. [Company Appeal (AT) (Ins.) No. 719 of 2023 & IA No. 2396 of 2023]** which is reproduced as under:

***

3. Ld. Counsel for the Appellant has submitted that the Authorized Representative of the Appellant Company is 75 years old woman and was suffering from severe illness, surviving on Oxygen Supplements, B-PAP in her day to day life. Therefore, the Authorized Representative of the Appellant company could not get the status of the petition filed before the Adjudicating Authority and was thus dependent on his counsel. Thereafter, the Appellant had inquired about the status of her petition from its erstwhile Counsel but his counsel did not respond in time and later on informed the Appellant that he could not able to appear before the Adjudicating Authority to which the Adjudicating Authority has dismissed the petition for non-prosecution. By the time the Appellant came to know about the orders, there was already a delay. The Appellant with its new Counsel had approached the Adjudicating Authority by filing a restoration application bearing Rest.A-47/2023. The Adjudicating Authority vide its impugned order dated 28.03.2023 has dismissed the said application on the ground of delay in filing of the Application for restoration.

4. On notice, Id. Counsel for the Respondent has appeared and opposed the appeal on similar pleas which has been recorded by the Adjudicating Authority in the impugned order. Further, Ld. Counsel for the Respondent has submitted that the Appellant has neither given any cogent reasons in the application seeking restoration of the Application for 150 days' delay in filing the Restoration Application nor filed any application for condonation of delay to condone those days. It is submitted that non-appearance of the Appellant has been recorded in the order dated 23.11.2021 passed by the Adjudicating Authority which read as under:

> "From the previous orders, it is also seen that the Petitioner in the matter has not been present on 18.03.2021, 10.08.2021 and on today's hearing, no one present on behalf of the Operational Creditor.
>
> In view of the above, the finally listed for further consideration as a last chance for ensuring the appearance on behalf of the operational creditor on 11.01.2022 on the said date, the petition shall be dismissed in default of non-prosecution."

5. Ld. Counsel for the Respondent has referred the Judgment of Hon'ble Supreme Court in the case of **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy & Ors. (2013) 12 SCC 649**, it is held that the "Condonation of delay cannot be granted as a matter of

course and such a liberal approach cannot be taken when there are no proper grounds given by the Appellant/Applicant".

6. We have heard Counsels for the parties and are of the considered opinion that the reason given by the Appellant are not sufficient reason to allow the appeal.

***

49. NCLAT had refused restoration where delay exceeded 30 days and was primarily attributed to counsel's lapse. This supports a strict application of Rule 48(2) and doesn't support the argument that advocate's negligence automatically constitutes sufficient cause.

50. On the other hand, the Appellant contends that Reliance placed by the Respondent on the case of ***Rudra (supra)*** is completely misplaced and inapplicable to the facts of the present case. Even this judgment does not lay down any mandatory requirement for filing a separate application seeking condonation of delay. We find the arguments presented by the appellant that ***Rudra (supra)*** is not applicable is not sustainable as the facts of the present case are very similar to ***Rudra (supra)***. Moreover, the judgment in ***Rudra (supra)*** also relies upon the judgment of Honorable Supreme Court **Esha Bhattacharjee (supra)**, wherein it is held that the *"Condonation of delay cannot be granted as a matter of course and such a liberal approach cannot be taken when there are no proper grounds given by the Appellant/Applicant".* We find that for condonation of delay liberal interpretation cannot extend to gross negligence, inaction, or lack of bona fides. We find that Appellant-V-Con's conduct of

repeated non-appearance and delayed filing for restoration falls within "gross negligence" and doesn't justify condonation of delay.

51. The Respondent also claims that the debt claimed by the applicant is disputed due to pre-existing dispute. But its reply is limited to the maintainability of the application. Since we are deciding only on the maintainability of the petition, therefore at this stage we are not looking into the merits of the case, even though the preexisting dispute may not help the case of the appellant.

52. Now we look into some other authorities relied upon by both sides.

Authorities relied upon by the Appellant:

Sesh Nath Singh v. Baidyabati Sheoraphuli Cooperative Bank Ltd., (2021) 7 SCC 313.

53. Appellant contends that in this case, the Hon'ble Supreme Court held that by virtue of Section 238-A of the IBC, the provisions of the Limitation Act, 1963—including Section 5—apply to proceedings under Sections 7 and 9. The Court also clarified that a formal application for condonation is not indispensable, so long as the material on record discloses "sufficient cause." Thus, NCLT's insistence on a separate delay condonation application in IA 195(MP) of 2022 is not sustainable. Appellant-V-Con argues that substance prevails over form, and that the Tribunal ought to have examined the explanation embedded in the restoration application itself. We don't have any disagreement with the cited

judgment but it doesn't help the appellant's case as it has not been able to show sufficient cause for the condonation of delay. We further find that even though the adjudicating authority has noted that there is no delay condonation application, yet we find from the material placed on record that there is no sufficient cause for condoning the delay. Therefore, this judgment is of no assistance to the appellant.

N. Balakrishnan v. M. Krishnamurthy (1998) 7 SCC 123

54. In this case the Court held that length of delay is not decisive; what matters is whether the explanation is bona fide and not tainted by mala fides or deliberate delay. Appellant -V-Con invokes this to neutralize the Respondent's emphasis on the 111-day delay, contending that the explanation—counsel's lapse during the COVID-19 period—is bona fide and therefore deserves acceptance. The basic requirement is sufficient cause and which is not made out in the present case and therefore, basis the material placed on record there is no sufficient cause for condoning the delay. Therefore, this judgment is also of no assistance to the appellant.

Collector Land Acquisition Anantnag v. Mst Katiji (1987) 2 SCC 107

55. Appellant contends that this judgment mandates a liberal approach to condonation, emphasizing that substantial justice should not be sacrificed at the altar of technicalities. Appellant claims that this judgement supports a purposive reading of Section 5 of the Limitation Act and Rule 48(2) of the NCLT Rules, favouring restoration so that the Section 9 petition is adjudicated on merits. We note that the insolvency proceedings are under a special law of IBC

2016 and the law has been clearly settled in various judgments of honorable Supreme Court particularly **Glas Trust (supra)** and therefore this judgment is of no assistance to the Appellant in the IBC proceedings which are time bound.

Rafiq v. Munshilal (1987) 2 SCC 107

56. The Hon'ble Supreme Court held that a litigant should not suffer for the fault of counsel where the litigant has acted diligently in engaging and instructing the advocate. Appellant- V-Con attributes repeated non-appearance leading to dismissal (25.03.2022) to its erstwhile counsel, asserting absence of deliberate abandonment. We find that in the present case the appellant has not been vigilant enough even after the dismissal of its petition and the grounds that litigant should not suffer for the fault of the counsel will not help the case of the appellant.

Smt Lachi Tewari v Director of Land Records AIR 1984 SC 41

57. The Court recognized that in an adversarial system, a litigant is entitled to rely on counsel and is not expected to monitor every procedural step. Appellant uses it to justify V-Con's claimed lack of knowledge of dismissal until 28.07.2022 as consistent with normal legal practice. As noted by us earlier also the appellant has not been vigilant enough in time bound IBC proceedings and therefore it cannot claim that lack of knowledge which led to the dismissal and therefore this judgment is of no assistance to the appellant. Moreover, we note that the law has been clearly laid down - not only in the form of IBC 2016 but also in various judgments of Hon'ble Supreme Court.

Vamsidhar Maddipatla vs Teckbond Laboratories Pvt Ltd, 2017 SCC OnLine NCLAT 604

58. The NCLAT held that Rule 15 of the NCLT Rules allows enlargement of time even beyond the 30-day limit in Rule 48(2) and that restoration can be granted without a separate condonation application where sufficient cause exists. We find that law has been settled in subsequent judgement of Hon'ble Supreme Court GLAS **Trust Company LLC (supra)** and therefore the judgment of this Appellate Tribunal may not of any assistance to the Appellant.

Sunita v Lalit Sansanwal 2024 DHC 4984

59. The Delhi High Court emphasized that the right to have a matter decided on **merits** should not be defeated where explanations are bona fide. It reinforces the principle that restoration should be favoured where the claim has never been adjudicated. We find it be of no avail as facts are different and specific provisions exits under the Code to deal with such situations.

Authorities relied upon by the Respondent:

State of UP v Satish Chand Shivhare and Brothers 2022 SCC OnLine SC 215

60. The Court stressed that condonation is discretionary and requires a cogent, detailed explanation; casual or vague reasons are insufficient. Respondent-Shreeram argues that generic references to COVID-19 and counsel lapse lack specificity and diligence.

A B Govardhan v P Ragothaman (2024) 10 SCC 613

61. The Court reiterated that the entire conduct of the litigant must be examined, and mere invocation of "sufficient cause" is inadequate. Highlights Appellant-V-Con's prolonged inaction and lack of follow-up with the Tribunal.

Pathapati Subba Reddy v Special Deputy 2024 INSC 286

62. The Court held that systemic or unexplained delay cannot be condoned on equitable grounds alone. Supports a stricter stance against prolonged inaction both before and after dismissal.

B K Educational Services Pvt Ltd v Parag Gupta and Associates AIR 2018 SC 5601

63. This judgment emphasized that limitation under the IBC must be strictly enforced and that stale claims cannot be revived. Invoked to argue that leniency in restoration would undermine the IBC's time-bound framework.

Radha Export India Pvt Ltd v K P Jayaram (2020) 10 SCC 538.

64. The Court underscored the importance of speed, certainty, and discipline in IBC proceedings. Supports the argument that procedural defaults should not be lightly condoned in insolvency matters.

65. We find that all above judgements cited by the Respondent supports the case of the Respondent and go against the case of the Appellant. We find that the law and judicial precedents support a strict construction of limitation and procedural discipline, particularly in the IBC context where expedition and finality are paramount.

66. We further observe that the matter was taken up by the Adjudicating Authority and it notes as follows:

> "7. After considering the above facts and circumstances of the case, it is noted that on account of multiple non-appearance, the main petition was disposed of vide order dated 25.03.2022. Further, the Applicant/Operational Creditor has also not filed any application for condonation of delay in filing of the Restoration Application beyond the prescribed 30 days under Rule 48(2) of the NCLT Rules, 2016. As such, this restoration application deserves to be rejected."

67. We further observe that the original IA No. 195 of 2022 was filed under Rule 11 of the Code. It provides for inherent powers with the NCLT to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal. This has been clearly interpreted in various judgments that inherent powers may be exercised in cases where there is no express provision under the legal framework. In the present case, there is a clear express provision under Rule 48(2) of NCLT Rules, which prescribes for restoration of the application in such cases. Therefore, the IA could not have been entertained under Rule 11 of the NCLT Rules as it would be in contravention of the express provisions of the law. The restoration application was required to be filed within a specified period of 30 days as per second proviso of Rule 48 of the NCLT Rules, 2016. From the perusal of various order sheets, which are placed on records, it is revealed that the Applicant was not present on 31.08.2021, 29.10.2021, 23.12.2021 and again on 25.03.2022 so the application was unattended four times from 31.03.2021 till 25.03.2022. The

Adjudicating Authority has dismissed the main petition for non-prosecution with liberty to revive. The records relevant context of the order dated 25.03.2022 is reproduced as follows:

> "Records reveals that on the ground that no one appears for the Operational Creditor for last four consecutive dates, it appears that the Operational Creditor is not interested to proceed with the matter, hence proceedings stands disposed of for non-prosecution with liberty to revive."

68. We find that restoration of the main matter has been filed after about five months of the main petition. We further find that sufficient cause has not been presented either before the Adjudicating Authority or before us to condone the delay. Even if we had to consider condoning the delay, we could have done as per Rule 48(2) of the NCLT Rules 2016 for up to 30 days and not 111 days. Therefore, we do not find any infirmity in the order of the adjudicating authority. We are therefore inclined to dismiss the Appeal.

Order

69. Basis above analysis, the Appeal is dismissed. All related IA's are also disposed of. No orders as to costs.

[Justice N Seshasayee]
Member (Judicial)

[Arun Baroka]
Member (Technical)

[Indevar Pandey]
Member (Technical)

New Delhi.
April 08, 2026.

pawan