

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) No. 297 of 2026

IN THE MATTER OF:

Nitu Mittal

...Appellant

Versus

Rajesh Bansal & Anr.

...Respondents

Present:

For Appellant : Mr. Rachit Mittal, Mr. Yashraj Singh, Mr. Parish Mishra, Mr. Abhishek Sinha & Mr. Arnav Singh Deo, Adv.

For Respondents : Mr. Dilip Kumar Niranjana & Mr. Karmveer, for R-1.

O R D E R
(Hybrid Mode)

[Per : Mohammad Faiz Alam Khan (Oral)]

03.08.2026 We have been informed that the hard copy of affidavit of service has been filed by Appellant, the same is taken on record.

2. We also notice that Mr. Dilip Kumar Niranjana is present before us on behalf of Respondent No. 1.

3. It is informed by Learned Counsel for the Appellant which has not been objected by Learned Counsel for the Respondent No. 1 that Respondent No. 2 is a Perma Party and no relief has been claimed against the same. We place on record the statement given by Counsel for the Parties.

4. Heard Learned Counsel for the Appellant and Learned Counsel for the Respondent. Perused the record.

5. The instant appeal has been filed by the Appellant who was Respondent No. 2 before the National Company Law Tribunal New Delhi Bench (Court - II) (**Adjudicating Authority**) passed in IA 290/ND/2024 in CP-50/241-242/ND/2022, challenging the order dated 05.05.2026, whereby the application moved by the Appellant/ Respondent No. 2 for recall of order dated 08.10.2024 was dismissed.

6. Learned Counsel for the Appellant while drawing our attention towards the order dated 08.10.2024 submits that this order has been passed when the Appellant was not represented before the Learned Adjudicating Authority.

7. It is further submitted that by order dated 08.10.2024, the proceedings of the above mentioned petition was set as ex-parte against the Respondent.

8. It is further submitted that to recall this order the IA 290/ND/2024 was moved by the Appellant before the Learned Adjudicating Authority, in which it was specifically contended that the information pertaining to the proceedings of the Learned Adjudicating Authority were not furnished/ informed by Counsel for the Appellant / Respondent No. 2 and it was only before 08.10.2024 while scrolling the web portal of the NCLT, the Appellant/ Respondent No. 2 got knowledge of the fact that her Counsel is not appearing before the Learned Adjudicating Authority and also not informing about the status of the proceedings before the Adjudicating Authority.

9. It is thereafter the application for recall was filed immediately on 05.12.2024, however, the same has been dismissed by passing the Impugned Order.

10. It is vehemently submitted that the parties should not be penalised for the non-performance of their Counsels and therefore, a sympathetic view should have been adopted by the Learned Adjudicating Authority.

11. Per-contra, Learned Counsel for the Respondent No. 1 submits that at first, the notice by the Learned Adjudicating Authority was issued on 21.03.2023 and 09.06.2023, the Appellant/ Respondent No. 2 appeared before the Learned Tribunal below and four weeks time was granted for the purpose of filing reply and thereafter till date of passing the Impugned Order, no reply has been filed, while in between the case was listed before the Learned Adjudicating Authority for six times.

12. It is further submitted that the whole purpose of moving the restoration application before the Learned Adjudicating Authority was to keep the proceedings pending and with the same purpose, the instant appeal has been filed.

13. Having heard Learned Counsel for the Parties and perused the record we notice that the facts of this appeal are more or less admitted to the parties. It appears to be an admitted fact that on 09.06.2023, it was for the very first time four weeks time was granted to the Appellant/ Respondent No. 2 for filing of reply and the same could not be filed and by passing of the Impugned Order dated 08.10.2024, the proceedings were set ex-parte against the Respondent No. 2/ Appellant.

15. The reasons which has been given by Learned Counsel for the Appellant for non compliance of the order passed by the Learned Adjudicating Authority for non filing of reply before it, is in terms that the Counsel engaged by the Appellant/ Respondent No. 2 was not providing any information pertaining to the orders passed by Learned Adjudicating Authority and it is on this score the reply could not be filed in time and further that the knowledge of non performance of the Counsel for the Respondent No. 2/ Appellant was first inferred by the Appellant before 08.10.2024, when he was scrolling through the NCLT Portal.

16. We are of the considered view that the proceedings in Court, wherein the Parties are represented by their Counsel as must be conducted with due diligence. The utmost duty of an Advocate apart from conducting the case diligently is also to have regular communication with their parties and to inform them about status of their case. We are also of the view that for the mistake or wrong committed by the Counsel, the Parties should not be penalised.

17. We are of the further view that so far as possible every *lis* pending before the Court of Law should be adjudicated on merits unless a party is intentionally not contesting the *lis* diligently and in that case the order for dismissal in default as ex-parte proceedings may be passed.

18. Thus, keeping in view all the facts of the case, we are of the considered view that one opportunity may be provided to the Appellant/ Respondent No. 2 to file his reply in order to contest the case diligently, with specific stipulation that if the said reply is not filed within the period which

may granted by us, no further opportunity would be available to Respondent No. 2/ Appellant for this purpose.

19. Having regard to the above reasons, the Impugned Order dated 05.05.2026 passed by the Learned Adjudicating Authority in IA 290/ND/2024 in CP-50/241-242/ND/2022 is hereby set aside.

20. The Appellant/ Respondent No. 2 may file the reply before the Learned Adjudicating Authority with an advance copy to Learned Counsel for the Applicant /Respondent No. 1 within a week from today.

21. We specifically provide and observe that if reply is not filed by the Appellant/ Respondent within one week from today, the Impugned Order passed by the Learned Adjudicating Authority as well as the order dated 08.10.2024 would automatically revive.

22. Since, some prejudice appears to have been caused to Respondent No. 1 which in our considered opinion may be compensated by cost, we direct the Appellant to pay the cost of Rs. 10,000/- to Respondent No. 1 within one week from today.

23. The appeal is disposed of in above terms. Pending I.A.'s are also disposed of.

[Justice Mohammad Faiz Alam Khan]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

Sim/mr