

NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT VI

Item No. P4

RST.A (IBC)/89(MB)2025

IN

C.P. (IB)/17(MB)2022

CORAM:

SHRI SAMEER KAKAR
HON'BLE MEMBER (TECHNICAL)

SHRI NILESH SHARMA
HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF HEARING (HYBRID) DATED **04.09.2026**

NAME OF THE PARTIES: **Kairav Anil Trivedi**
 Cogent Engineers Private Limited

Under Rule 11 of NCLT Rules, 2016.

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in the open court, *vide* separate order. Detailed order is being uploaded on the NCLT portal today.

Sd/-
NILESH SHARMA
MEMBER (JUDICIAL)

//VM//

Sd/-
SAMEER KAKAR
MEMBER (TECHNICAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH-VI

Rst. A. (IBC) No. 89/2025 IN CP (IB) No. 17/MB-VI/2022

[Under Rule 11 of NCLT Rules, 2016]

IN THE MATTER OF:

MR. KAIRAV ANIL TRIVEDI - LIQUIDATOR

Office: - 413-414 Shramjeevan B5

Opposite Lodha New Cuffe Parade,

Wadala East Mumbai – 400037, Maharashtra.

.... Applicant

IN THE MATTER BETWEEN:

COGENT ENGINEERS PRIVATE LIMITED

...Operational Creditor/(OC)

Vs.

KBK CHEM- ENGINEERING PRIVATE LIMITED

... Corporate Debtor/(CD)

Order Pronounced: 04.09.2026

CORAM:

HON'BLE SHRI NILESH SHARMA, MEMBER (JUDICIAL)

HON'BLE SHRI SAMEER KAKAR, MEMBER (TECHNICAL)

Appearances (in Hybrid Mode):

For the Applicant: Adv. Mr. Kairav Trivedi.

For the Respondent: Not Present.

ORDER

[Per: CORAM]

1. This is a Restoration Application filed on 06.08.2025 under Rule 11 of the NCLT Rules, 2016, by the Applicant seeking following prayers:

- a. To restore the CP No. 17/2022 which was E-filed on 15.11.2021 vide e-filing no. 2709138057032021 and lost by the Registry during COVID-19, the restoration being Ex-parte dismissed based on misrepresentation by the respondent during the hearing on 22.05.2024 prima facie contrary to the efforts reflected in the application for restoration on affidavit, before the NCLT.*
- b. Pass any such order / directions as this Hon'ble Bench may deem fit.*

The present Application was affirmed on 04.08.2025.

2. The facts as pleaded by the Applicant in the Application are briefly summarised hereinafter:

3. This CP 17/2022, was filed on 18.04.2020 vide filing no. 2709138013492020, but due to Covid-19 Pandemic, the papers were lost by the registry and thus the entire Application was required to be refiled as CP 17/2022.

4. This CP 17/2022 was earlier *Ex-parte* dismissed on account of no representation from the Applicant side on 22.05.2024, but the explanation for not being able to attend is as follows: -

- a. The Restoration Application 10/2024 was accepted vide order date 12.03.2024, copy uploaded by the NCLT Mumbai Bench-III is annexed at Annexure B to the Application.

- b. In the immediate next date of hearing on 10.04.2024 in the Bench-III, the order states that the matter be transferred to NCLT Bench-VI & Notice be issued to parties by the Registry for the NCLT. Copy of the said order annexed as Annexure-C to the Application.
- c. But no such Notice of transfer to Bench VI and the next date of hearing was ever received from the Registry till date.
- d. Thus, the Applicant was not aware of the next date of hearing in this matter after the Transfer from Bench-III.
- e. It seems that a hearing was held on 30.04.2024 at Bench-VI wherein none of the parties could remain present as no notice was served after transfer of this matter to Bench-VI. Copy of the order dated 30.04.2024 annexed as Annexure-D to the Application.
- f. To the surprise of the Applicant, order has been uploaded on 22.05.2024. Copy annexed as Annexure-E to the Application which state that:

Quote

"1 This is a matter transferred from Court III and stands listed for appearance of the parties.

2 However, there is no representation for the OC today.

3. Record indicates that the matter was dismissed for non-prosecution on 01.11.2023 and later restored to file on 12.03.2024.

4. However, the OC was absent on 10.04.2024 also. The representative of

the CD who is present submits that the conduct of the OC indicates that they are not interested to pursue the matter.

5. Having heard the representative of the CD and considering the absence

of the OC, we feel that the OC does not propose to pursue the matter.

6. CP is dismissed for default."

Unquote

5. It is stated that since no notice was served by the Registry of the next date of hearing after the transfer of this matter to NCLT Bench-VI from NCLT Bench-III, thus without any prior intimation from the registry of NCLT of the Transfer and the next date of hearing, the Applicant was not in a position to attend the hearing on 22.05.2024, which is an ex-parte hearing.
6. The operational creditor is under Liquidation, the Documents on records shows the confirmation of the Corporate Debtor of the amount outstanding in its books and thus liability has been accepted by the respondent in the books of account. Further the completion certificates issued for the various projects also shows that the work has been completed and the balance in the books of account of the Respondent as per the Auditors confirmation letter also shows the liability which has remained unpaid till date. Thus, this is fit case of initiation of CIRP against the respondent who after proving notice has not paid the undisputed liability leading to the Applicant becoming insolvent.
7. Thus, for want of notice of Transfer from Bench-III to Bench-VI and the Notice of the next date of hearing, this application cannot be dismissed and therefore this application has been filed for Restoration of CP.
8. It is stated that even after repeated efforts of e-filing an Application u/s 9 from 2020, instead of ensuring that the proceedings are complete repeated *ex-parte* orders have been passed without even informing the Applicant of unilateral transfer from one bench to other and relying on the misrepresentation during the hearing once again ex- parte order for dismissal of the Restoration Application in Rst. A. No. 43/2024 has been passed on 28.08.2024 by stating that Counsel for OC was directed specifically to be represent *vide* order dated 09.08.2024. However, there is no representation for

OC today also. In view of the above, it is clear that the OC does not propose to pursue the matter. Hence, the said Rst. A. was dismissed for default.

9. It is stated that, as on the date of the hearing even without any representation, the facts on records in the IA for restoration clearly reflected the efforts being made by the Liquidator (erstwhile IRP/RP) from 2020 to file a Sec 9 Application, the Application being lost by the registry during Covid-19 and the same being re-filed again in 2022, which was unilaterally transferred by Bench-III without any reasons and without any notice to the Applicant, without ensuring that the pleadings are complete, ex-parte Orders have been passed causing grave injustice to the CD under CIRP / Liquidation, against the principles of natural justice, based on misrepresentation without considering the facts on records available with the Bench in its filing on affidavit in the applications being heard.
10. It is requested to restore CP No. 17/2022 and permit a hearing especially since the Applicant is under Liquidation and the amount claimed has been accepted by the CD through its Auditor. The copy of the balance confirmation received from the Auditor of CD is enclosed and this Application was e-filed on 18.04.2020 vide no. 2709138013492020, but due to Covid-19 Pandemic, the papers were lost by the registry and thus the entire application was required to be re-filed as CP No. 17/2022.
11. Injustice that could be caused to the Applicant who is itself under Liquidation, requiring Restoration of the CP Application.
 1. The Applicant is under Liquidation and the main reasons of its failure is Non-Payment of outstanding dues by the Creditors even after successful completion of its Projects as these Creditors are aware that the CD had stopped operations and

also sold its factory, land and building in 2013 and since the dues of the office employees are pending, there is no one to do the follow up of these payments.

2. In this particular case KBK, after issuing successful completion certificate for all the projects annexed as Annexure G to the Application, has with a malice intention to deceive the Creditor of its rightful dues, refused to pay the amount outstanding in their books as follows :-
 - a. Rs. 53,30,672/- outstanding amount has been confirmed by the Auditors of KBK as per their balance Confirmation statement.
 - b. Rs. 53,30,672/- is shown as outstanding as per the ledger account in the books of KBK.
 - c. The Projected completion Certificates shows that all projects have been completed.
 - d. Thus, there is no reason for KBK not to pay the balance amount as per their Books and this has been accepted by KBK during the settlement discussions including a reconciliation of the amount as per our records and as per their books.
 - e. During the settlement talks with the RP / Liquidator at KBK Pune visit, they had stated that because Sentini has filed a suit for Liquidation damages against Cogent in Pune Court, where in we have made KBK as a witness, therefore as a safety measure in case if any liability for damages occurs then KBK would recover the same from this balance outstanding in books.
 - f. The Copy of the Dismissal application of Sentini by Pune Court and the Copy of PO which states the name of KBK in case of any Litigation, etc are enclosed for reference.

- g. This reconfirms that the no payment as per the Balance in books is with a malice intention to deceive the creditor of its rightful dues, since this OC is fully aware that the CD is not in operations since 2013 and does not have any employees to do the follow up for the balance outstanding.
- h. Thus, the need to condone the delay under limitations act to ensure that the Application for CIRP is admitted.

ANALYSIS AND FINDINGS

- 12. We have heard the learned counsel for the Applicant. We have also carefully considered documents placed before us.
- 13. It is noted that this Restoration Application was heard and reserved for orders on 20.07.2026.
- 14. The present Application has been filed seeking restoration of CP No. 17/2022, which was dismissed for non-appearance of the Applicant on 22.05.2024. The Applicant has invoked Rule 11 of the National Company Law Tribunal Rules, 2016 and has attributed its non-appearance principally to the alleged failure of the Registry to communicate the transfer of the matter from Bench-III to Bench-VI and the subsequent date of hearing.
- 15. At the outset, it is pertinent to note that Rule 48 of the NCLT Rules, 2016 specifically deals with the consequence of non-appearance of an applicant. Rule 48(1) empowers the Tribunal, where the applicant does not appear on the date fixed for hearing, either to dismiss the petition/application for default or to hear and decide the same on merits. Rule 48(2) further provides for restoration where the applicant satisfies the Tribunal that there was sufficient cause for non-appearance. Rule 48 of the NCLT, Rules is reproduced for reference herein below:

“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.”

16. In the present case, the record reveals that the Company Petition No. 17 of 2022 was dismissed on 22.05.2024. The Applicant thereafter filed Restoration Application No. 43/2024, which itself came to be dismissed for default on 28.08.2024. Thus, the Applicant had already availed the remedy of seeking restoration of the very same Company Petition but failed to prosecute the said Restoration Application as well.

17. The present Application has thereafter been filed only on 06.08.2025, i.e. almost one year after the dismissal of the earlier Restoration Application. The Applicant has not satisfactorily explained the circumstances, which prevented it from approaching this Tribunal immediately after the dismissal of Restoration Application No. 43/2024. The Application is conspicuously silent as to when the Applicant acquired knowledge of the order dated 28.08.2024 and what steps were taken between 28.08.2024 and 06.08.2025. The mere assertion that the Applicant was unaware of certain earlier dates of hearing cannot, by itself, explain the subsequent and substantial delay in filing the present Application.

18. The Applicant has sought to attribute its earlier non-appearance to the alleged non-service of notice after transfer of the matter from Bench-III to Bench-VI.

19. In the present case, the Applicant relies upon the order dated 10.04.2024, which records that the matter was to be transferred to Bench-VI and notice was to be issued

by the Registry. However, even assuming that no separate notice of the transfer or subsequent date was received, the Applicant was subsequently required to explain its continued absence and, more importantly, its failure to diligently prosecute the Restoration Application No. 43/2024. The explanation offered in the present Application does not satisfactorily account for this subsequent conduct.

20. However, it is observed from the records that the Applicant was present on 15.07.2024 in Rst. A No. 43 of 2024 before Court-VI (when the matter was transferred from Court-III to Court -VI) and on 08.12.2025 in Rst. A. No. 89 of 2025 which is the present Application before Court-VI. Therefore, the Applicant cannot now say that there was no separate notice issued by the Registry to inform about the transfer of the case.

21. The conduct of the Applicant has to be considered cumulatively. The Company Petition remained unattended; it was dismissed for default on 22.05.2024; the Restoration Application filed thereafter was again dismissed for want of prosecution on 28.08.2024; and the present Application was filed only on 06.08.2025. Thus, this is not a case of a solitary or inadvertent non-appearance. There have been repeated defaults in prosecuting the proceedings. The Applicant was required to demonstrate a continuous and *bona fide* intention to pursue the litigation, which has not been satisfactorily established.

22. It is observed that the Applicant has not made a representation on multiple occasion when the matter was listed. The following is the table of occasions when there was no representation on behalf of the Applicant:

Sl. No.	Listing of the matter along with CP/IA nos.	Date	Representation of the parties
1.	CP No. 17 of 2022 (Court III)	12.01.2022	None appeared

2.	CP No. 17 of 2022 (Court III)	19.01.2022	Corporate Debtor appeared
3.	CP No. 17 of 2022 (Court III)	22.07.2022	CD appeared
4.	IA. No. 3034 of 2023 in CP No. 17 of 2022 (Court III)	11.08.2023	Liquidator, Mr. Kairav Trivedi not present
5.	IA. No. 3034 of 2023 in CP No. 17 of 2022 (Court III)	26.09.2023	Liquidator, Mr. Kairav Trivedi not present
6.	IA. No. 3034 of 2023 in CP No. 17 of 2022 (Court III) (IA Dismissed for non-prosecution)	01.11.2023	Liquidator, Mr. Kairav Trivedi not present
7.	IA. No. 3034 of 2023 in CP No. 17 of 2022 (Court III) Registry was directed to transfer matter to Court-VI	10.04.2024	Mr. Kairav Trivedi – not appeared and CD appeared
8.	CP No. 17 of 2022 (Court VI)	30.04.2024	None appeared
9.	CP No. 17 of 2022 (Court VI) CP dismissed for default	22.05.2024	Applicant not present and CD is present
10.	Rst. A No. 43 of 2024 in CP No. 17 of 2022 (Court VI)	09.08.2024	Applicant not present
11.	Rst. A No. 43 of 2024 in CP No. 17 of 2022 (Court VI) Rst. A dismissed for default	28.08.2024	Applicant not present
12.	Rst. A No. 89 of 2025 in CP No. 17 of 2022 (Court VI)	15.04.2026	Applicant present

13.	Rst. A No. 89 of 2025 in CP No. 17 of 2022 (Court VI)	02.06.2026	Applicant not present and CD is present
14.	Rst. A No. 89 of 2025 in CP No. 17 of 2022 (Court VI)	11.06.2026	Applicant and CD present
15.	Rst. A No. 89 of 2025 in CP No. 17 of 2022 (Court VI)	20.07.2026	Applicant present and CD not present

23. It is also material that the present Application has not been accompanied by a satisfactory explanation for the delay in approaching this Tribunal after the dismissal of Restoration Application No. 43/2024. The Applicant has referred to the Limitation Act and has sought indulgence on the ground that the underlying claim is genuine and remains unpaid.

24. The alleged admission of liability by the Corporate Debtor cannot, by itself, constitute a sufficient ground for condoning unexplained procedural defaults. The insolvency jurisdiction under the Code is a statutory remedy and the Applicant is required to satisfy the procedural and limitation requirements applicable to the invocation of such remedy. The fact that the Applicant is itself under liquidation, or that it claims to be suffering financial hardship on account of non-payment by the Corporate Debtor, may explain its interest in pursuing the claim, but cannot substitute the requirement of demonstrating sufficient cause for the repeated non-appearance.

25. We are also mindful that proceedings under the Insolvency and Bankruptcy Code are required to be dealt with expeditiously. While procedural rules are intended to advance justice and not defeat it, the same principle applies equally to the Corporate Debtor, which is entitled to finality and cannot be subjected indefinitely to the threat

of insolvency proceedings merely because the Applicant has failed to diligently prosecute its petition.

26. From the above table, it is seen that the conduct of the Applicant (Mr. Kairav Trivedi) in pursuing the matter is not serious and diligent. The Applicant's CP and Restoration Application were dismissed for the same reason, i.e., non-prosecution.

27. In view of the foregoing discussion, the Rst. A No. 89 of 2025 is **dismissed**.

28. It is clarified that no opinion is being expressed on the merits of the claim of the Applicant, including the alleged outstanding amount, balance confirmation, completion certificates or the alleged acknowledgment of liability by the Corporate Debtor.

Sd/-
NILESH SHARMA
(MEMBER JUDICIAL)

//VM//

Sd/-
SAMEER KAKAR
(MEMBER TECHNICAL)