NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 347 of 2026

(Arising out of the Impugned Order dated 13.11.2025 passed by the 'Adjudicating Authority' (National Company Law Tribunal, Kolkata Bench) in I.A No. 1570 of 2024 arising out of I.A No. 1061 of 2021 in CP (IB) 176/KB/2018)

IN THE MATTER OF:

EASTERN POWER DISTRIBUTION COMPANY OF ANDHRA PRADESH LIMITED. ...Appellant(s)

Versus

DAULAT RESOLUTION SERVICES PVT. LTD. ...Respondent(s)

Present:

For Appellant(s)	**:**	Mr. Joy Saha, Sr. Advocate with Mr. Sidhartha Sharma, Mr. RishavDutt, Mr. AmanKataruka, Advocates.
ForRespondent(s)	**:**	Mr. ShaunakMitra, Mr. Riyanshu Agarwal, Advocates.

Judgment

[Per: Justice Sharad Kumar Sharma, Member (Judicial)]

1. The Appellant is a distribution licensee as per description contained under sub-section (17) of Section 2 of the Electricity Act, 2003. The Appellant, in its status as a distribution licensee, is competent to operate and maintain its distribution system for ensuring an efficient and effective supplying electricity to consumers, within the area under its control. The electricity in itself forms and is contained under Entry 38 of List III of the Seventh Schedule to the Constitution of India. Being an entity performing its duties as ensured

to be taken under the Constitution and acting as a distribution agency under the Electricity Act, 2003, thus the Appellant performs a statutory function.

2. The Appellant is before us, being aggrieved by the impugned order dated 13.11.2025 passed by the learned NCLT, Kolkata Bench in I.A. No. 1570 of 2024, which was arising out of I.A. No. 1061 of 2021 that was preferred in C.P. (IB) No. 176/KB/2018.

3. The brief facts of the controversy at hand are that, the Appellant, which is a statutory distribution licensee responsible for the supply of electricity in the State of Andhra Pradesh performs a public duty of supplying essential services to its consumers. The Corporate Debtor, M/s Impex Metal & Ferro Alloys Limited, was a consumer within the ambit of Section 2(15) of Electricity Act, 2003, for the electricity supplied by the Appellant under its registered supply connection number. However, the Corporate Debtor due to debt and default by an Order dated 01.03.2018 of the Adjudicating Authority was placed under the CIRP, in proceeding those were held under Section 7 of the I&B Code, 2016.

4. With the process of initiation of the CIRP, in light of the provision contained under Section 14 of the I&B Code, a moratorium was imposed, but since the electricity in itself falls to be an essential service under Article 21 of the Constitution of India, that stands protected by sub-section (2A) of Section 14 of the I&B Code. The aforesaid implication of exemption contemplated

under sub-section (2A) of Section 14 is to be read as under:-

> **"Section 14**
>
> *Subject to the provision of sub-sections (2), (2A) and (3), on the insolvency commencement date, the Adjudicating Authority shall, by order, declare a moratorium for prohibiting all of the following, namely:*
>
> *(1) ……….*
>
> *(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.*
>
> *(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified."*

5. The exception those have been carved out from the imposition of prohibition as a consequence of the declaration of moratorium under Section 14. **It exempts from prohibition the supply of essential goods and services to the Corporate Debtor. This would be inclusive of the "electricity"**, which has been supplied by the Appellant to the Corporate Debtor during the period when the moratorium was being enforced and continued, merely since the Corporate Debtor was under the CIRP, meaning

thereby that the Appellant's right to recover the consumption charges as regards to the electricity consumed by the Corporate Debtor, it stood protected by the aforesaid provision, since being services it be protected by quid pro quo.

6. The controversy arose qua the remittance of the consumption charges for the electricity supplied and consumed by the Corporate Debtor, for carrying manufacturing activities and also in terms of the order dated 05.10.2021 passed in I.A. (IBC) 748/KB/2021.

7. The Ld. Adjudicating Authority while considering IA (IBC) 748/KB/2021filed in C.P.(IB)No.176/KB/2018, vide its order dated 05.10.2021 observed that the distribution company of the electricity i.e., the Appellant herein, would be eligible to claim the CIRP cost for the energy supplied and consumed during the moratorium period, and the charges which were assessed to be Rs. 20,72,84,722/-, which remained due to be paid.

8. In C.P.(IB)No.176/KB/2018 preferred against the Corporate Debtor, Respondent No.2 was appointed as the Interim Resolution Professional. Consequent upon the imposition of the moratorium under Section 14 of the I&B Code and the Appellant after getting the knowledge of the appointment of the IRP, which was intimated vide communication dated 21.03.2018, a request was made that since the electricity already supplied by the Appellant and consumed by Corporate Debtor, falls under the essential services and, under law, it could not be terminated, hence the appellant would be entitled

to consumption charges for the actual electricity consumption during the period from 01.03.2018 to 24.04.2019. The consumption charges were initially raised for Rs. 58,68,44,160/-. The IRP is shown to have paid Rs. 37,95,59,438/-, despite of the aforesaid payment and the time extensions being granted, the balance amount that remained due to be paid was Rs. 20,72,84,722/-.

9. One, Shri Subodh Kumar Agarwal, after having been appointed as IRP vide letter dated 21.03.2018, had intimated the Corporate Debtor, that because of the implications flowing from sub-section 2 of Section 14, there had not been any disruption in the supply of essential services and that the same would be maintained. Consequently, owing to the representation of the IRP dated 31.03.2018, a request was made to the Appellant, to restore power supply with an assurance that a prompt payment of consumption charges in response was assured to be made to the Appellant, as the same had fallen due against the connection bearing HT Sc No. VZM 283 and accordingly, vide an order passed by an Appellant on 04.04.2018, under an assurance of prompt payment of the electricity consumption charges, the electricity supply was restored on 04.04.2018 and accordingly, month-wise electricity dues were raised and was expected to be paid, they were intimated to the IRP, as well as to the Corporate Debtor.

10. Since there was utilization of power at 132 KV voltage, owing to the admitted fact that heavy plant and machinery were being operated, a huge

amount of electricity was consumed and payment of bills was necessarily and mandatorily required to be treated as part of the CIRP cost being the expenditure towards electricity consumed during CIRP period. In the order dated 05.10.2021, the Tribunal has proceeded to pass an order, the relevant extract of which is given as under (e):

> *"e. Respondent No.1 is also directed to approach Respondent No.2, Liquidator, for payment of its dues and Respondent No.2 is directed to consider the dues of Respondent No.1 in accordance with the Code and make payment as per Section 53 of the Code."*

11. The case at hand, is that may be that the consumption of the electricity, since being protected under sub-section (2) of Section 14 of the I&B Code, would be recoverable under Section 14(a) and the same could not be denied at any stage, and under law it was to be treated to be CIRP cost.

12. The Resolution Professional in his communication that was addressed to the Liquidator, admitted the fact that the electricity consumed by the Corporate Debtor was for carrying out the manufacturing activities, which were being persistently pursued by the Corporate Debtor based on the electricity that was supplied by the Appellant. Based upon the order dated 05.10.2021, the Liquidator was put to notice regarding remittance of the balance amount of Rs. 20,72,84,722/- payable towards actual consumptions of electricity. The Appellant, had also sent a letter on 13.11.2021 with complete details and sought payment from the Liquidator. But since there

was no remittance of the said amount within reasonable time despite email communication, the Appellant on 01.12.2021 had to file **I.A. No. 1061/2021** praying for the following reliefs:

> *"i) Direct the Liquidator to pay CIRP Costs running into Rs.20,72,84,722 (Rupees Twenty Crores Seventy-Two Lakhs Eighty-Four Thousand Seven Hundred Twenty-Two) payable upfront under Section 53 (1) (a) and in terms of order dated 05.10.2021 passed by this Hon'ble Tribunal inIA No. (IBC) 748 (KB) of 2021.*
>
> *ii) Pass any order or orders as deem fit in the present circumstances of the case."*

13. There had been multiple communications in between 2022 and 2023, in the context of the relief sought in I.A. No. 1061/2021 that was preferred by the Appellant for the payment of the actual electricity consumption charges. However, the said application preferred by the Appellant came up for consideration before the Tribunal on 08.11.2023, but owing to the absence of the counsel, who didn't appear on the said date, the same was dismissed for want of prosecution. The relevant observation made in the order is extracted hereunder:

> *"8. IA(I.B.C)/ 1061(KB)2021 – In view of the order dated 31.08.2023 since none appears on behalf of the applicant. Accordingly, this matter is dismissed for non-prosecution.".*

14. The basis of the dismissal of I.A. No. 1061/KB/2021, was not on merits, rather exclusively on the ground that the Appellant's Counsel had not complied with the earlier order dated 31.08.2023.If the earlier order dated 31.08.2023 is taken into consideration, the Ld. Tribunal vide order dated 31.08.2023 had rather given a last opportunity to the Applicant to appear in the matter, failing which it was observed that an appropriate order would be passed. It is on that pretext since the last opportunity had been provided to the appellant by the Ld. Tribunal vide its order dated 31.08.2023, the Tribunal has borrowed the thought from the said order of 31.08.2023, while dismissing the application for want of prosecution vide order dated 08.11.2023 as extracted above.

15. Seeking recall thereof, the Applicant filed a restoration application on 25.07.2024 being **Restoration Application No.1570 of 2024**, praying that the order dated 08.11.2023 dismissing I.A. No. 1061/2021, and that may be recalled and the application may be heard on merits.

16. In the application for recall, that was preferred by the Appellant on 25.07.2024, it had been on a premise that because of the fact the Appellant, being an entity, which was established in Vishakhapatnam (Andhra Pradesh), and the matters pertaining to the instant company petition, being a subject related to the NCLT, Kolkata. The Appellant could have coordinated the proceedings before NCLT, Kolkata, only through counsel and to assess as to which legal professional would be best to pursue its cause so that the interest

of the Appellant may be safeguarded and accordingly the Appellant contends that thereafter collecting necessary information, the Appellant engaged Mr. Rakesh Kumar Sharma, as its Advocate on Record. It is the case of the Appellant, that at the time of his engagement as a counsel for the Appellant, in the proceedings of the company petition. The counsel Mr. Rakesh Kumar Sharma, has projected that he operates his professional activities both from Kolkata, as well as from his chambers in Delhi and has an office at 45/8/A, Moor Avenue, Regent Park, Kolkata – 700040 too. Further, as per the Appellant, that the said counsel informed that he had regular practice before the NCLT, Kolkata, and assured that the case of the Appellant would be diligently pursued and owing to the aforesaid practice and assurance, for which there was no reason to disbelieve, the appellant engaged Mr. Rakesh Kumar Sharma who appeared on their behalf. The said application has been preferred as I.A. No. 1061/21 filed through Mr. Rakesh Kumar Sharma, praying for the relief that has already been extracted above.

17. The Appellant contends, that after inducting Mr. Rakesh Kumar Sharma, as their counsel for the purpose of filing and pursuing of I.A. No. 1061/2021,and after sufficiently long period of almost two years, there was a communication gap between the Appellant and his counsel Mr. Rakesh Kumar Sharma, because no information was being ever imparted by the Counsel to the Appellant, which is located in Andhra Pradesh, and hence he could not get any personalized attention in the matters that was pending before the NCLT, Kolkata.

18. The case of the Appellant in the restoration application is that Mr. Rakesh Kumar Sharma, thereafter had entrusted the brief to one of his junior colleagues who was unable to take effective steps for properly safeguarding the interest of the Appellant in the proceedings pending before the NCLT, Kolkata. It was only upon dismissal of I.A. No. 1061 of 2021 for want of prosecution and upon perusal of the records of the NCLT, that it was revealed that perhaps Mr. Rakesh Kumar Sharma had never physically appeared before the Ld. NCLT despite repeated assurances given by him. Thereafter, the Applicant engaged M/s Sharma & Sharma Advocates and Consultants LLP, to represent them in the applications pending in the company petition.

19. The newly engaged counsel for the Appellant, couldn't represent the Appellant in the proceedings of I.A. No. 712 of 2023 and I.A. No. 723 of 2023. The Appellant has come up with the case that, it could not effectively pursue the application for recall of the order passed in I.A. No. 1061/2021 because its earlier counsel, who was representing its cause, had not given a No Objection Certificate (NOC), and thus the Appellant was unable to engage another counsel. Hence, it was because of it, could not instruct any other counsel for taking effective measures in I.A. No. 1061/2021. The record of the proceedings show that since 24.04.2023, Mr. Rakesh Kumar Sharma, did not participate in the proceedings. Later on, when the Appellant collected information, it realized that even there was no office of Mr. Rakesh Kumar Sharma in Kolkata and because the Appellant itself is based at

Vishakhapatnam (Andhra Pradesh), the peculiar situation beyond control has occurred.

20. The Appellant sought to file an application for seeking recall of the order dated 08.11.2023, dismissing I.A. No. 1061/2021 for want of prosecution, and the said recall application has been rejected by the impugned order rendered by the Ld. Tribunal on 13.11.2025. It has come on record in the proceedings before the Ld. Tribunal, that in the absence of a NOC from the earlier counsel, Mr. Rakesh Kumar Sharma, the Appellant was incapacitated from engaging another counsel. While opposing the application, the Respondent's case has been that the restoration application deserves dismissal because **the absence of the counsel is deliberate** and the Appellant cannot take any advantage of the mistake committed by earlier counsel in not appearing in the proceedings before the Tribunal that was held on 08.11.2023.

21. The Respondent contended that the **Restoration Application I.A. No 1570 of 2024**, was barred by time, on the ground that as per the provision contained under Rule 48 of the NCLT Rules, it prescribes 30 days' time from the date of the order of dismissal. It is submitted that since the I.A. No. 1061/2021 was dismissed on 08.11.2023 and the Restoration Application No.1570 of 2024, itself was preferred on 25.07.2024, hence there is a delay of about seven and a half months from the date of dismissal. The Ld. Tribunal, while considering the implications of Rule 48 of the Rules, and particularly

the aspect of limitation contained under sub-rule (2) of Rule 48, ultimately came to the conclusion, that since the restoration application itself was preferred by the Appellant after a lapse of 30 days by filing the same before the Registrar of the Ld. NCLT on 25.07.2024, the delay does not deserve to be condoned. Accordingly, the Restoration Application I.A. No. 1570 of 2024 was rejected on the ground of delay, observing that even after coming to know that the earlier counsel, Mr. Rakesh Kumar Sharma, had walked out of the proceedings, the Appellant ought to have engaged another counsel.

22. It has been the case of the Appellant that after dismissal of I.A. No. 1061/2021 vide order dated 08.11.2023, the Appellant had been regularly requesting Mr. Rakesh Kumar Sharma to grant a NOC, but the same was maliciously not granted, due to which the application for recall couldn't be filed earlier, by the Counsel due to professional comity. Ld. Counsel for the Appellant submits that it is a settled principle of law that no party to the proceedings should be made to suffer of his rights to judicial remedies saved by Article 21 of Constitution of India, because of the mistakes of its counsel and in case a party has engaged a counsel and he has not diligently participated in the proceedings and the proceedings are decided against it is an ex-parte order. The Appellant has every right to seek its recall and in relation thereto of filing an application for restoration on 25.07.2024, it cannot be said that the date of filing of the restoration application as such that there is an inordinate delay in seeking recall of the order dated 08.11.2023.

23. In the application that was preferred by the appellant for seeking recall of the Order dated 08.11.2023, dismissing the I.A. No.1061 of 2021. It was explained exclusively on the ground that the earlier Counsel has deliberately not appeared in those proceedings and been in voluntary breach of trust under contract i.e. Vakalatnama, had deliberately permitted the proceedings to be dismissed for want of prosecution. Owing to the aforesaid fact because the earlier Counsel Mr. Rakesh Kumar Sharma had deliberately not appeared in those proceedings, owing to certain professional rift with the appellant. He had **mens-rea not to appear**, when the case was called up on 08.11.2023. In these circumstances, it cannot be said that the dismissal of the application for want of default was owing to the negligence of the Counsel. In fact, it was due to subsequent conduct of the earlier Counsel, which was an intentional act of the Counsel, who had deliberately permitted the proceedings to be dismissed for want of prosecution and that is what which could be clearly understood from the grounds pleaded by the appellant in the restoration application preferred by the appellant, being I.A. No.1570 of 2024 seeking recall of the Order dated 08.11.2023. If the application in itself is taken into consideration, the appellant had quite specifically come up with the case that, they were deliberately misled by the earlier Counsel Mr. Rakesh Kumar Sharma, that he had an office in Kolkata and they had been regularly appearing before the NCLT in various other company matters, which later on proved to be otherwise. It was the case of the appellant that owing to the misrepresentation that was made by Mr. Rakesh Kumar Sharma of ensuring

that he used to pursue the proceedings before the NCLT, Kolkata, the matter was entrusted to him by the appellant, which was later on proved to be otherwise. Even looking it from prospective of the distance constraints as the appellant was stationed in Andhra Pradesh and there was no reason for him to initially not to believe to the statements and the assurance extended by Mr. Rakesh Kumar Sharma that he would be diligently pursuing the proceedings, thus the appellant remained under the belief that the interest of this litigation is being protected and taken care of by his Counsel Mr. Sharma.

24. Later Counsel for the appellant had pleaded in the Restoration Application, that upon discovery of the fact that the Counsel thus earlier engaged by the appellant has handed over the litigation to his junior colleague and he himself was unable to take effective steps, the default chanced on 08.11.2023.

25. We make it very clear that at this point of time, that when a Counsel is engaged in relation to the matters for pursuing the matter of statutory companies or corporation like the one as appellant which is a creation of a statute having its existence under the provisions of the Electricity Act, it has to be always represented before a Court through a panel of Counsels and such a statutory organization, which is represented through a panel of Counsels or by any special Counsel engaged by statutory company/corporation, they cannot entrust the brief of the case to the junior Counsel to pursue the matter of the statutory corporation, particularly its Counsel in persona who has been engaged as a Counsel is professionally bound to appear. In all these matters,

the Counsel engaged on record has had to ensure that he appears when the matter is taken up and has to pursue the matter himself/herself. The very fact that Mr. Rakesh Kumar Sharma, after being engaged by the appellant, had entrusted the brief to his junior colleague and associate him to pursue the matter on behalf of the appellant, is not a process permissible under the law and hence, the dismissal of the case in default has had to be attributable to the conduct of the earlier Counsel, who physically never appeared and that is the fact reflected from the Order sheet itself. In that eventuality, the appellant shouldn't have reposed confidence upon a Counsel, who didn't appear most of time in the proceedings, as his appearance is not reflected in the Order sheet, and had been normally appearing through junior colleague, which under the terms of contract of engagement, cannot be permitted to do so, which render the very conduct of Mr. Rakesh Kumar Sharma to be disillusioning the appellant and rather betraying the trust reposed upon him by the appellant.

26. Because of the aforesaid fact, the restoration application did contain all these conditions and had pleaded that on various dates for example 16.06.2023, 25.07.2023, 31.08.2023, 27.09.2023 and lastly on 08.11.2023. It shows that Mr. Rakesh Kumar Sharma through his associate Mr. Nishant Sharma has lastly appeared on 24.04.2023. That itself shows that the earlier Counsel has lacked his interest in the matter and the case before the NCLT preferred by the appellant it mostly remained unrepresented, which necessitated the appellant to engage another Counsel. Hence by way of

reiteration, it could be said that in those cases where a litigant who engages the Counsel and has reposed confidence on him, it is later because of the conduct of the Counsel, if the Counsel does not appear on the dates to pursue the matter on behalf of the litigant engaging him, there would be a complete snapping of trust between the Counsel and the litigant and in that eventuality, the circumstances in the instant case, in which the petition was dismissed for want of prosecution, would show that it was not because of the fact of any dereliction or inadvertent mistake on part of the Counsel, but rather, **it was a deliberate and intentional act of the Counsel**, which had an attributed mens rea. In those eventualities, and the circumstances under which restoration was required to be considered, as the circumstances were entirely distinct to the one where dismissal in default is normally caused because of the negligence of the Counsel, his staff or office.

27. Under these situations where the earlier Counsel Mr. Rakesh Kumar Sharma intentionally didn't appear in the proceedings, the appellant had to engage another Counsel and because of which, the appellant under law was to obtain a no objection from the earlier Counsel Mr. Rakesh Kumar Sharma, so as to enable him to engage another Counsel. The aforesaid necessity of taking a 'no objection', from the earlier Counsel is a necessity contemplated under law because as per Rule 39 of the Bar Council of India Rules, which has been framed under Section 49(1)(c) of the Advocates Act, 1961 prescribes

as under:-

> *"39. An advocate shall not enter appearance in any case in which there is already a vakalat or memo of appearance filed by an advocate engaged for a party except with his consent; in case such consent is not produced he shall apply to the Court stating reasons why the said consent could not be produced and he shall appear only after obtaining the permission of the Court."*

28. On a simple reading of Rule 39, it rather creates an ethical restriction on the subsequent Counsel indented to be engaged to file a Vakalat or a memorandum of appearance, not prior to until and unless he obtains a no objection from the previous Counsel. Obviously, in the instant case, because of the fact that the earlier Counsel Mr. Rakesh Kumar Sharma had intentionally walked out of the proceedings without knowledge of the appellant and upon being questioned by the appellant himself about his non-appearance on 08.11.2023, it aggravated his demeanour and misunderstanding. It was because of which, the untoward incident cannot be ruled out to happen because of the conduct of the earlier Counsel who had declined to and rather delayed to give no objection as it was sought for by the appellant after disengaging the earlier Counsel.

29. The appellant, in order to meet out the restrictions contained under Rule 39 of the Bar Council of India Rules, the appellant in the application for recall has specifically come up with a case, that despite of several

persuasions, he was unable to get the no objection certificate from the earlier Counsel till July, 2024, its only when Mr. Rakesh Kumar Sharma, the earlier Counsel refused to grant the no objection certificate, on the ground that his bills were not fully paid. In these peculiar circumstances, the appellant cannot be shouldered with the responsibility of his Counsel's non-appearance on 08.11.2023 and thus filing of the subsequent application, though it might have been filed belatedly with a delay of seven and a half months, but was still required to be considered on its merits because the Tribunal ought to have rationally considered that these type of situations which do practically occur in the present ethical set up of this noble profession of advocacy, and when despite all precautions taken by the appellant to obtain no objection certificate because it was the need of law as per Rule 39, because until and unless the same was done, the subsequent Counsel had shown his reluctance to accept the brief and to appear and file a restoration application.

30. The learned Counsel for the appellant had argued that though it is a case of a deliberate absence by the Counsel, but still while arguing the matter from the perspective that a Counsel's mistake or an error may be deliberate or unintentional, the appellant cannot be made to suffer owing to the ratio laid down by the Hon'ble Apex Court in a Judgment reported in (1981) 2 SCC 788 ***"Rafiq and another vs. Munshilal and another"***. The Hon'ble Apex Court in its para – 3 has observed, that an action or inaction, whether it may be deliberate or by virtue of an omission or misdemeanor of his agent, the party should not be made to suffer because it was not within the control of

the appellant, in the instant case, to force and ensure upon his Counsel to have appeared on 08.11.2023 and that too by maintaining it from Andhra Pradesh, when the matter was called up, more particularly, when the earlier Counsel has already drawn an opinion for not to represent the cause of the appellant under his Vakalatnama, which was already surviving on the records before the NCLT. Para – 3 of the Judgment cited above is extracted hereunder:-

> *"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."

31. The aspect pertaining as to the interpretation to be assigned to Rule 39 of the Bar Council of India Rules, the same was considered by Himachal Pradesh High Court in a Judgment reported in AIR 2006 HP 94 ***"Oriental Insurance Co. vs. Smt. Sheela Devi and ors."*** wherein in para – 4, the High Court has observed that Rule clearly indicates that the advocate should not file Vakalatnama or put an appearance in case in which the party is already represented by an advocate. That means it is a self-imposed professional discipline for the newly inducted Counsel to be engaged later on to appear, even without the consent/no objection of the prior Counsel. In the said case too, it was a situation where the Counsel appeared without obtaining the consent/no objection from the earlier advocate which was deprecated. Para – 4 is extracted hereunder:-

> *"4. A bare perusal of this Rule clearly indicates that no Advocate should file his Vakalatnama or put in appearance in any case in which the party is already represented by an Advocate without obtaining the consent of such Advocate in case such consent is not forthcoming and cannot be produced the party/counsel should apply to the Court giving reasons thereof and shall only appear after the permission of the Court."*

32. The controversy at hand can also be considered from the perspective of the provisions contained under Order 3, Rule 4 of the Code of Civil Procedure. Order 3 Rule 4 of the Code of Civil Procedure as under:-

> *"4. Appointment of pleader. (1) No pleader shall act for any person in any Court, unless he has been appointed for the purpose by such person by a document in writing signed by such person or by his recognized agency or by some other person duly authorized by or under a power of attorney to make such appointment.*
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> *(2) Every such appointment shall be filed in Court and shall, for the purposes of sub-rule (1) be deemed to be in force until determined with the leave of the Court by a writing signed by the client or the pleader, as the case may be, and filed in Court or until the client or the pleader dies, or until all proceedings in the suit are ended so far as regard the client.*
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> *Explanation: For the purposes of this sub-rule, the following shall be deemed to be proceedings in the suit-*
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> *(a) an application for the review of decree or order in the suit.*
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> *(b) an application under Section 144 or under Section 152 of this Code, in relation to any decree or order made in the suit.*
>
> *(c) an appeal from any decree or order in the suit, and*
>
> *(d) any application or act for the purpose of obtaining copies of documents or return of documents*

produced or filed in the suit or of obtaining refund of moneys paid Into the Court in connection with the suit.

(3) Nothing in sub-rule (2) shall be construed-

(a) as extending, as between the pleader and his client, the duration for which the pleader is engaged, or

(b) as authorizing service on the pleader of any notice or document issued by any Court other than the Court for which the pleader was engaged, except where such service was expressly agreed to by the client in the document referred to in sub-rule (1)

(4) The High Court may, by general order, direct that, where the person by whom a pleader is appointed is unable to write his name, his mark upon the document appointing the pleader shall be attested by such person and in such manner as may be Specified by the order.

(5) No pleader who has been engaged for the purpose of pleading only shall plead on behalf of any party, unless he has filed in Court a memorandum of appearance signed by himself and stating-

(a) the names of the parties to the suit,

(b) the name of the party for whom he appears, and

(c) the name of the person by whom he is authorized to appear:

Provided that nothing in this sub-rule shall apply to any pleader engaged to plead on behalf any party by any other pleader who has been duly appointed to act in Court on behalf of such party."

33. On a simpliciter reading of Order 3 Rule 4 of the Code of Civil Procedure, it prescribes that once a Vakalatnama has been filed by the Counsel, it continues to remain in force until and unless "**it is determined by the Counsel himself or by the leave of the Court**", both circumstances were not existing in the present case. Since here, there is no determination or withdrawal of the Vakalatnama by the earlier Counsel, there would have been an impediment for the appellant to engage any subsequent Counsel under Rule 39, because as per Order 3 Rule 4 CPC, the Vakalatnama of the earlier Counsel would be treated to be continued on record, hence the subsequent Counsel could not have been engaged in the light of the stipulations contained under Rule 39. And that was the reason, which has been taken by the appellant for the purposes of filing of a recall application due to non-extension of no objection by the earlier Counsel for the appellant, it does seem to be genuine and there is no reason before us not to accept the same.

34. The aforesaid principal has been further discussed in the matters of *Oriental Insurance Company (supra*) particularly, that it has been observed in para – 13 and 14 of the said Judgment, which has been extracted here under:-

"13. A client if he wants to change his counsel should ordinarily first approach his counsel for return of the brief

and to obtain no objection from him. Normally a lawyer is expected to grant his consent unless there are sufficient and cogent reasons for him to decline the same, if, however, the lawyer does not given his consent then there is nothing to prevent the client from approaching the Court to determine the vakalat of the counsel previously representing him. Without determining the vakalat a fresh counsel cannot be engaged.

14. As per the Bar Council of India Rules quoted above every lawyer owes a duty to his colleague not to appear in any matter in which vakalat has already been filed by some other counsel. This is a salutary provision to maintain the dignity of the profession. This should not be by passed. In any event the client has a remedy even if the counsel does not give his no objection. He can always apply to the Court giving his reasons why the consent could not be produced and why he has to engage a new counsel. The Bar Council of India Rules are in consonance with the Rules framed by this Court referred to above as well as the provisions of the Code of Civil Procedure."

35. As per the ratio, that has been laid down in the matters of ***"Rafiq and another*** *(Supra)* as to what would be the impact when there happens to be dereliction by the intentional or an unintentional conduct on the part of the earlier Counsel, whether the litigant who has engaged the Counsel as his agent to represent his case in the appeal, if he deliberately remains absent whether the litigant could be precluded from taking an appropriate recourse

of the recall of the Order dismissing the proceedings for want of prosecution. This Tribunal in the matter of ***"Metalrod Pvt. Ltd. vs. Harshit Finvest Pvt. Ltd. and Ors."*** reported in (2025)ibclaw.in 563 NCLAT in para-6 has laid down the parameters as to in what manner, the aspect of limitation as contemplated under Rule 48 of the Rules is required to be considered and the ratio propounded therein has assigned interpretation observing thereof that if the proceedings stand dismissed for want of prosecution. It prescribes that Article 137 of the Limitation Act, 1963 provides the limitation for any application in which no period is prescribed and for that purposes, Rule 11 of the NCLT Rules, 2016, aims to protect the inherent powers of the Court, while interpreting the aspect of limitation for filing of a recall application, that has been considered. Relevant para – 6 is extracted herein:-

> *6. Coming to the submission, Rule 48 the said rule is with regard to restoration when application is dismissed for non-prosecution and the said rule has no application in the present case. Coming to the submission that statute does not prescribed for any limitation, we do not agree with the appellant. Article 137 of the Limitation Act provides limitation for any application for which no period is prescribed in the Limitation Act. If no period is prescribed, Article 137 shall govern any application. Hence, we are of the view that limitation for filing application will be three years and further the application for revival has been filed under Rule 11 of the NCLT Rules which protect the inherent power of the court. In the facts of case where Adjudicating Authority itself granted*

liberty to revive on breach of Consent Award exercise of jurisdiction by Adjudicating Authority to revive is in accordance with law and we do not find any substance in above submission.

36. The learned Counsel for the respondent, while opposing the appeal, had submitted that the dismissal of the restoration application by the learned Tribunal on the ground of limitation was justified for the reason being that the same was preferred beyond the period prescribed under Sub-Rule 2 of Rule 48 of the NCLT Rules, 2016. The reason assigned by the learned Tribunal is that since the appellant came to know about the inability of the Counsel in the beginning of the year 2023, when the Counsel had started not appearing in the proceedings and hence the appellant should have acted in diligence and should have been vigilant by then only changing another Counsel and hence in the absence of taking effective steps to change the Counsel due to his absence in 2023, it was observed that the appellant had derelicted in not diligently pursuing the proceedings when the knowledge of the conduct of appellant's Counsel of non-appearance was attributed to him quite prior in time.

37. The view taken by the learned Tribunal about the appellant's knowledge in the beginning of the year 2023 regards to the proceedings and the Counsel's inability to appear or not to appear prior to 08.11.2023, that itself cannot be derived back for the purposes of considering of the instant Restoration Application for recall of an Order, which has been passed at a much

subsequent stage that is on 08.11.2023. Because it is the settled law that even if it is presumed that the appellant had the knowledge of the earlier conduct of the Counsel who had shown lack of inclination because of earlier non-appearance since the beginning of year 2023, in that eventuality too, the said knowledge cannot be taken as to be a positive knowledge for the purposes of taking up the proceedings when it was taken up later by the Tribunal on 08.11.2023 because the said absence has to be independently considered and the inference with regards to lack of diligence on the part of the appellant because of earlier proceedings itself cannot be borrowed for on the basis of the earlier inactions of not changing the Counsel despite the earlier knowledge in the beginning of the year 2023.

38. Learned Counsel for the respondent in support of his contentions has made reference to the Judgment rendered by this Tribunal in **Company Appeal (AT) (Ins) No.283 of 2025 *"V-Con Integrated Solutions Pvt. Ltd.vs. M/s Shreeram Technology Services Pvt. Ltd."*** and particularly he has referred to para – 45 and 46 of the said Judgment. In case if we see the cumulative effect if the observations made in para – 45 of the said Judgment, which is extracted hereunder, it was dealing with the issue as to what would be sufficiency of the cause for the purposes of condonation of delay. The interpretation given by the Bench of this Tribunal with regards to the sufficiency of the cause, it is something more than a formal explanation of the delay. It may not be logical reason to be applied here, which could be made to the applied in the instant case, particularly, when the present company

appeal is entirely based upon a different fact of circumstances because if the restoration application is read in its totality, that itself is self-contained with the grounds already pleaded giving an explanation for as to what were the reasons because of which the appellant could not file the restoration application before time. Para – 45 of the said Judgment which is extracted hereunder:

> "Primarily, the learned Tribunal while dealing with the said matter of V-Con Integrated Solutions Pvt. Ltd.(supra) particularly the observation which has been made in para – 55, while determining the aspect whether the litigation could be made to suffer because of the Counsel's mistake had rather shifted upon that the appellant was not vigilant therein, which has resulted into a dismissal of the petition.

39. Primarily, the learned Tribunal while dealing with the said matter of V-Con Integrated Solutions Pvt. Ltd. (supra) particularly the observation which has been made in para – 45, while determining the aspect whether the litigation could be made to suffer because of the Counsel's mistake had rather shifted upon that the appellant was not vigilant therein by not contacting the Counsel, which has resulted into a dismissal of the petition. The said principal may not be factually applicable in the instant case, because here there is no question of lack of diligence on part of the appellant when the Counsel himself who has intentionally not participated in the proceedings due to his expected professional fee, which was said to be due to be paid by the appellant. (This

may be altogether a different aspect having no bearing in the instant company appeal). The ratio given in the said Judgment of V-Con Integrated Solutions Pvt. Ltd. (supra), as relied by the learned Counsel for the respondent, is not dealing with the issue from the factual perspective as to how a situation would be dealt where the learned Counsel knowing that the proceedings is listed and still he does not pursue the matter and nor informs the litigant who is the ultimate affected party, hence the absence of the Counsel was activated by malic of mens rea. Thus, here it is not a negligence of the Counsel, which is a subject matter of consideration but rather a deliberate act which was having a perpetuated act of the earlier Counsel, which was backed by mens rea. In that eventuality, since the Judgment of V-Con Integrated Solutions Pvt. Ltd.(supra) was not dealing with the issue about the acts of the Counsel based on mens rea and deliberate non-appearance that cannot be equated to be read in parlance to the act of negligence of the Counsel in non-appearance because both the factors, deliberate absence and negligent absence that would be having different facets to be considered while considering the Restoration Application, dismissing the proceedings for want of prosecution.

40. There would be yet another relevant and important feature, which is required to be considered while we deal with the controversy, though very restricted, from the view point of the challenge given to the impugned Order, about dismissal of the proceedings for want of prosecution. Factually, there is no dispute that the restoration application itself was preferred at a belated stage, and the reasons for delay was already extended by the appellant by way

of pleadings in the application for restoration itself, that was preferred by it before the learned Tribunal. The same was not rationally considered and consequently, it had resulted in the passing of the impugned Order of 30.01.2025 dismissing I.A. No.1061 of 2021. The hovering fact and which normally we too considered as to be one of the prime factors, is an aspect of delay. There wouldn't be a second thought that the proceedings under the I&B Code are require to be carried in a time bound manner, as it is envisaged by the Preamble of the Code itself, which reads that it has to deal with the subject of reorganization and insolvency or resolution of the corporate persons, partnership firms, individuals, etc., which is aimed to be completed within a time bound manner. There are other facets which are also given under the Preamble of the Code, but at the present moment, we may not be concerned with it hence, we are not referring.

41. The concept of time bound manner of deciding the principal proceedings as per the Preamble, does not and it never at any place of the Code eradicate or cloud to dilute the effect of the implications of the applicability of Section 238A of the Code. Section 238A of the Code, which is extracted hereunder deals with the aspect of application of the law of limitation over the proceedings those are regulated by the Code, but quite obviously its not in relation to those provisions contained in the Code, which restricts or contains a self-contained provision governing the aspect of limitation. Section 238A of the I&B Code reads as under:-

*"238A. Limitation.—The provisions of the Limitation Act, 1963 shall, **as far as may be**, apply to the **proceedings** or appeals before the Adjudicating Authority, the National Company Law Appellate Tribunal, the Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal, **as the case may be**."*

42. The implication of Section 238A, if it is read with precision, the language of the provision itself is quite explicit when it uses the word "as far as may" to apply to "**proceedings or appeals**" and further the expression given therein "as the case may be". The three expressions as specifically contained under Section 238A carves out an exception to law of generality. So far as the statue has used the word "as far as may", it carves out an exception to the general rule enabling the Tribunal to exercise its discretion to deal with the situation of limitation while considering the interlocutory applications or a proceedings in a pending proceedings. If that would be the feature, in that eventuality, the restoration application in itself, which happens to be an interlocutory proceedings, will not be governed by the principal facet of limitation, which prescribes for concluding the proceedings with a time bound manner. Because the law never intended to eliminate the application of provisions contained under Section 238A and that is why the expression "as far as may" under Section 238A, prescribes an element of discretion to be exercised by the Tribunal depending upon the circumstances of each and every case, more particularly, when it is in relation to the interlocutory proceedings. The

principal aspect of limitation under the preamble of the Code would be to the main proceeding, as it has been contained under the Preamble of the Code. If that be so, the power of discretion and its exercise is always vested with the Tribunal to condone the delay to meet the ends of substantial justice, where the application has been preferred with the delay for seeking recall of the Order of the proceedings those have been dismissed in default. This contention stands further fortified when the provisions as contained under Section 238A uses other expressions like "the proceedings" and "as the case may be".

43. The proceedings under the Code has not been defined either under Section 3 or Section 5 of the Code, meaning thereby if the statute has specifically not defined the term "proceedings" under its definition clause as contained under Section 3 and Section 5, it will have a general connotation where the word "proceedings" has to be read as to be a self- contained provision, which would also be inclusive of the interlocutory proceedings vis-à-vis the main proceedings too. And the rationale of the said interpretation is that had for the purposes of Section 238A under law, if at all it intended to carve out an exception from application of provisions of Section 238A, it would have specifically explained under Section 238A, itself whether it applies to the interlocutory proceedings or exclusively to the main proceedings. If that be not so, the specific concept of deciding the principal proceedings in a time frame, will not apply to the proceedings, which are contained and covered

under Section 238A, which is inclusive of the interlocutory proceedings i.e. the restoration application too.

44. It is because of this reason, Section 238A also uses the word “as the case may be”. That means there has to be a correlated judicial analysis as to whether the principals or aspect of limitation is required to be considered while reading these three expressions together, “as far as may”, “proceedings” and “as the case may be”. “As far as may” is an exception in relation to the general proceedings, which is inclusive of the interlocutory proceedings and further it is a discretion vested with the Tribunal depending upon the circumstances and situation of the case to consider the grant of benefit of limitation.

45. If in those circumstances, where the provisions of Section 238A is made applicable, it will attract the application of Section 5 of the Limitation Act. If we read the provisions contained under Section 5 of the Limitation Act, which is extracted 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."

46. The Limitation Act in itself do not prescribe for filing of a specific application for seeking condonation of delay in those matters where the aspect of condonation of delay is covered or explained as per the principals contained under Section 5 of the Limitation Act and the justification for that logic is that if we read Section 5 of Limitation Act, as extracted above, it only expresses that on explanation of delay has had to be to the "satisfaction of the Court" to establish that the applicant had sufficient cause for not preferring an appeal or an application, within the prescribed time, in exception to the specific provision containing self-contained restrictions of limitation.

47. Once again, Section 5 itself also includes the word "application and any appeal". That means, the application once herein would denote to be an interlocutory application which is filed during the pendency of the main proceedings, which will be inclusive of the restoration application, which has to be considered subject to the sufficiency of the cause, which has to be to the satisfaction of the Court. What this Tribunal is trying to impress upon is that, provision of Section 5 of Limitation Act, in itself do not contemplate filing of an independent application for seeking condonation of delay though filing of an independent application is not barred, since in the instant case, the appellant had explained the reasons of delay in the application itself that

would suffice the purpose to satisfy the delay condonation to be considered by the Tribunal to determine itself the sufficiency subject to its satisfaction for considering condonation of delay.

48. So far as the aspect of sufficiency is concerned, after having gone through the application, it cannot be ruled out that in this professional era of cut throat competition, such type of situations do occur where professionals owing to certain misunderstandings and times due to hard core grudges or monetary disputes normally do not effectively pursue the proceedings and which ultimately falls upon the litigant whose cause is defeated because of their professional breach, and their unilateral decision not to appear, though despite the fact that Vakalatnama which is a trust reposed by litigants still continues. In these situations, the litigant cannot be blamed and be made to suffer due to the deliberate act of Counsel.

49. In the instant case, as we have already discussed that it is not the negligence of the Counsel, because negligence would have been where he intended to discharge his responsibility, but was refrained because of certain inevitable reasons to appear. This was not the situation in this case. The situation herein was where there was a deliberate intended conduct on the part of the Counsel, to ensure not to appear and if this is the situation, then quite obviously, its knowledge cannot be said to be attributed to the appellant because under normal circumstances, under a common prudence too no Counsel, who has developed differences with the litigant, will intimate the litigant about his intention of non-appearance, and for which the litigant

himself is not to be made to suffer. It is because of the aforesaid reason, this Company Appeal would be falling under a distinction to the ratio laid down by the coordinate Bench of the Tribunal in the matter of ***V-Con Integrated Solutions Pvt. Ltd.*** (supra), since being differently placed both on facts and circumstances, we feel that this company appeal deserves to be allowed.

50. The purpose of law of limitation has been in order to curb a deprivation, which may intentionally or unintentionally cause to a decree holder in whose favour the Judgement has been rendered and whose rights have been matured to be enforced as per law. In those eventualities, the law of limitation comes into play to protect the right already accrued upon final determination, and that is why, a lapse of time period of the period, which protects the judgement debtor to agitate his cause against the Judgement rendered in favour of the decree holder. The period of limitation for filing the proceedings before superior appellate Court, prescribed under law is for filing of proceedings under the gestation period before making an Order to be matured to be judicially implemented. It is under those eventualities that law of limitation is to be strictly construed where it is a final adjudication, which could have been sought to be challenged in the proceedings by way of a regular appeal and in those eventualities, the limitation has to be construed in accordance with the aspect of limitation as contained under Section 5 of the Limitation Act, or even with rigidity where appeal under Section 61 is against the final determination, or cause before Adjudicating Authority itself is barred by limitation, then delay has a different rigid fact.

51. So far as the case at hand is concerned, this was not a case which was finally determining a right of a party in a litigation, it was rather prior to the determination of a dispute on merits, the proceedings were dismissed for want of prosecution and too because of Counsels deliberate intended mistake, which was being sought to be restored wherein the effect of Sub-Rule - 2 of Rule 48 of the Rules was argued by the respondent in order to contend that the application preferred for recall of the Order under Rule 48 would not be maintainable. Sub-Rule 2 of Rule 48 of the Rules, which contemplates filing of an application though it prescribes for an upper time limit of 30 days, but if we see the provision in itself, it does not prescribe that an application for recall of an Order cannot be entertained after the expiry of 30 days' period or nor does the provision restrict or create a bar in filing of any application beyond a said period. That means in those eventualities, the provisions of limitation as contemplated under Section 238A of the I&B Code, would be applicable and if that be so, Section 5 would apply, and if Section 5 of Limitation Act is made applicable, in those eventualities, the gravamen of determining the aspect of limitation has had to be rational and not in a deprivation of a right of the party to the proceedings, of his constitutional right to litigate. In the instant case, because of the reason that the lis has not yet been decided on merits and the same is pending consideration, and it is only because of the dismissal of the restoration application, the appellant is before us.

52. In that eventuality, in the light of the provisions contained under Section 238A of the I&B Code, it has had to be read in the context of Section 5 of the Limitation Act and in those eventualities, the delay would be extendable to meet the ends of justice and it has not to be tested with the precision as compared to the other provisions of the I&B Code, where the proceedings are strictly regulated by law of limitation, which are a self-contained provision. Hence, the reason for rejection of the application is uncalled for. For the aforesaid reasons, the company appeal stands allowed. Accordingly, the same would stand allowed. **The impugned order of 13.11.2025 would stand quashed.** The Order dated 08.11.2023 dismissing the application of the appellant being I.A. No.1061 of 2021 would too stand recalled. The I.A. No.1570 of 2024 would stand allowed. The application – I.A. No.1061 of 2021 preferred by the appellant raising their claim would be considered by the learned Tribunal on its own merits.

All pending interlocutory applications would stand closed.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[ArunBaroka]
Member (Technical)

[Indevar Pandey]
Member (Technical)

25th September, 2026
rs/abhishek pandey