

NATIONAL COMPANY LAW TRIBUNAL
COURT-V, MUMBAI BENCH

3.RST.A/91/2026 C.P. (IB)/951(MB)2022

IN THE MATTER OF

Mr. Mahhesh Bapuraoji Nage

Vs

Sudhir Constructions Infraspac Private Limited

U/s 7 of the Insolvency and Bankruptcy Code, 2016

Order Delivered on 16.10.2026

CORAM:

SH. VINAY GOEL
MEMBER (J)

SH. CHARANJEET SINGH GULATI
MEMBER (T)

Appearance through VC/Physical/Hybrid Mode:

For the Petitioner:

For the Respondent:

ORDER

RST.A/91/2026: The above RST.A/91/2026 is listed for pronouncement of the order.
The same is pronounced in open court, vide a separate order.

Sd/-
VINAY GOEL
Member (Judicial)

//Rahul//

Sd/-
CHARANJEET SINGH GULATI
Member (Technical)

**NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH – COURT - V**

RST. A./ 91 (MB) / 2026

IN

I.A. / 5139 (MB) / 2024

IN

C.P. / 951 (MB) / 2022

Under Rule 11 read with Rule 48(2) of the
NCLT Rules, 2016.

Mr. Anil Tukaram Sawarkar

Having address at:

House no. 7, beside Shivyatan Complex,
Wardha Road, near Zenda Chowk,
Somalwada, Khamla, Nagpur, Maharashtra
- 440 025.

Email: sawarkaranil@yahoo.com

... Applicant

Versus

Bank of Maharashtra

Having address at:

Asset Recovery Branch, Sitabardi,
Mahabank Building Nagpur - 440 012.

Email: agmcredit2@mahabank.co.in

... Respondent

Order Pronounced On: 16.10.2026

Coram:

Shri. Vinay Goel

Hon'ble Member (Judicial)

Shri Charanjeet Singh Gulati

Hon'ble Member (Technical)

Appearances:

For the Applicant: Adv. Bhupendra Dave (PH)

For the Respondents: Adv. Raina Birla (R-1) (Bank of Maharashtra) (VC)

ORDER

1. Ld. Counsel for the Applicant submits that the I.A. (IB)/5139(MB)2024 was dismissed for want of prosecution on 24.08.2026. He submits that there is no factual inaccuracy in the order dated 24.08.2026 passed in I.A. (IB)/5139(MB)2024.
2. The said I.A. was listed before this Tribunal on 18.08.2026. However, no one appeared on behalf of the Applicant, and the matter was accordingly listed on 24.08.2026, for appearance of the Applicant/ submission on behalf of the Applicant failing which the said IA was liable to be dismissed.
3. It is submitted that due to the change of counsel and the lack of effective communication, he could not attend on 24.08.2026, which has led to the dismissal of the I.A. (IB)/5139(MB)2024, and accordingly, he submits that the present Restoration Application should be allowed in the interest of justice and the Application should be decided on merits.
4. We have considered such submissions of the Ld. Counsel for the Applicant and note that the Ld. Counsel for the Applicant has not made out a case for Restoration as the matter has been pending since 19.11.2024. Adjournments in the past were granted on the request of Counsels being not present or for any other reason and for some time, when the board was too heavy, the matter was adjourned due to paucity of time.
5. The factual aspects and dates which have been mentioned in the order dated 24.08.2026 have not been disputed and it is further not disputed that on 24.08.2026, no one was present for the Applicant.
6. In support of his submission that the dismissal order dated 24.08.2026 passed in I.A. 5139 of 2024, deserves to be recalled, the Ld. Counsel for the Applicant placed reliance on the judgment of the Hon'ble Supreme Court in ***Rafiq & Anr. Vs. Munshilal & Anr. 1981 AIR 140*** and judgment of the Hon'ble NCLAT in ***M/s. Lok Sewak Leasing & Investment Private Limited Vs. M/s. GBL Chemical Limited CA(AT)***

483 of 2025. The relevant extract of the judgment passed by Hon'ble NCLAT is reproduced hereinbelow:

“41. We note that as per the Rule 48 of the NCLT Rules, 2016, if sufficient cause is made out, and is within the stipulated 30 days, the Tribunal is obligated to restore the same. The Rule 48 of the NCLT Rules, 2016 reads as under:-

“Rule 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 cause for his nonappearance 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.”

(Emphasis Supplied)”

42. Thus, the Rule 48 (2) of uses the word “shall” which signify that if sufficient cause is made out, then it is expected that the Tribunal shall allow restoration application. The purpose of dismissal for non-prosecution is for procurement of the concerned party and his counsel and not to dismiss the appeal without going into the merit. This is a general spirit and courts follow the same including this Appellate Tribunal. At this stage, we also take into consideration that the liberal view is to be taken in such issues provided the litigant is not causal and non-vigilant.”

7. From the aforesaid extract, it is evident that the Hon'ble NCLAT, taking into consideration the judgment of the Hon'ble Supreme Court in **Rafiq & Anr. (Supra)** observed that where sufficient cause, as stipulated under Rule 48(2), is made out by the Applicant, the Restoration Application shall be allowed. However, in the present case, it is pertinent to note that this Tribunal, vide order dated 18.08.2026 passed in I.A. No. 5139 of 2024, specifically recorded the non-appearance of

the Applicant and directed the matter to be listed on 24.08.2026 for appearance/submissions of the Applicant, failing which the Application would be dismissed. However, on 24.08.2026 also, neither any submission was made by the Applicant nor did the Applicant or its authorised representative appear before this Tribunal. Accordingly, I.A. No. 5139 of 2024 was dismissed for want of prosecution.

8. Though an applicant is the master of its own case, it cannot be permitted to become the master of the proceedings or to delay their progress by remaining absent or otherwise. Before passing the order of dismissal, this Tribunal duly observed the principles of natural justice in their true letter and spirit and afforded sufficient opportunity to the Applicant. The Applicant has failed to point out any legal infirmity, procedural irregularity or violation of the principles of natural justice warranting interference with the order. Mere dissatisfaction with the order cannot constitute a valid ground for its recall.
9. Under such circumstances, we observe that no case of “Sufficient Cause” has been made out warranting restoration of the I.A. (IB)/5139(MB)2024. Accordingly, under the facts and circumstances of the case, this Restoration Application **91 of 2026** is **dismissed**.

Sd/-

Vinay Goel

Member (Judicial)

OmkarD.

Sd/-

Charanjeet Singh Gulati

Member (Technical)