

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**  
**Company Appeal(AT) (Insolvency) No. 1295 of 2019**

(Arising out of order dated 26.08.2019 passed by the Adjudicating Authority, National Company Law, Tribunal, Mumbai Bench, Mumbai, in CP(IB)-4140/(MB)/2018)

**IN THE MATTER OF:**

**M/s Ricoh Thermal Media Asia Pacific Pvt. Ltd.**

902, Atrium 2, Chakala,  
Andheri-Kurla Road,  
Andheri East,  
Mumbai-400 059

**...Appellant**

**Vs**

**M/s Efficient Data Pvt. Ltd.**

231 B II, Meghdam Manor,  
Dr. S.S Rao Road,  
Lal Baug, Mumbai- 400 012

**....Respondent**

**Present:**

**For Appellant: Ms. Komal Mundhra and Mr. Saurabh Agrawal,  
Advocates.**

**For Respondent: No appearance.**

**JUDGMENT**

**18.03.2020** The instant Appeal is projected by the Appellant as an 'Aggrieved person' in respect of the impugned order of dismissal of CP(IB)-4140/(MB)/2018 dated 26.08.2019 passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench, Mumbai).

2. The Adjudicating Authority in the Impugned Order had observed the following:

*"No one responds from either side. The petition is dismissed in default of the parties."*

3. The Learned Counsel for the Appellant submits that the Appellant/ 'Operational Creditor' was under the bonafide belief that the matter was Listed before the Adjudicating Authority on 16.09.2019, as initially noted, as was evident from the 'Cause List'. As such the Appellant was not aware of the hearing the matter on 26.08.2019, when the Petition was dismissed for default. Only on 16.09.2019, the Appellant was apprised of the fact that the matter was already dismissed.

4. It transpires that in CP(IB)-4140/(MB)/2018 (filed under Section 9 of the Insolvency and Bankruptcy Code, 2016) on 10.06.2019 no one responded from either side and the matter was directed to be listed on 16.08.2019 'For Admission'. Again on 26.08.2019, there was no response from either side and the petition was dismissed for default of the parties.

5. Although the Appellant has filed the instant Appeal before this Tribunal invoking Section 61 of the IBC yet, in law the Appellant has a viable, effective and equally efficacious remedy of projecting an Application for restoration of CP(IB)-4140/(MB)/2018 setting out sufficient reasons or causes for non-appearance on the dates fixed by the Adjudicating Authority/Tribunal. Admittedly, the Appellant has not filed any Application for restoration of the petition which was dismissed for default on 26.08.2019 by resorting to Rule-11 of the NCLT Rules, 2016.

6. In fact, Rule-11 of NCLT Rules-2016 speaks of 'Inherent Powers of the National Company Law Tribunal' and the same can be exercised to meet ends of justice or to prevent an abuse of process of the Tribunal. Therefore, this Tribunal

simpliciter, at this stage, grants permission to the Appellant to move before the Adjudicating Authority and to file an Application seeking restoration of the main Petition, by setting out the reasons for non-appearance on earlier occasions before the Adjudicating Authority/Tribunal, within one week from the date of receipt of this Judgment. It is open to the Appellant as an 'Applicant' to raise all factual and legal pleas before the said Authority and to seek redressal of its grievances in accordance with Law, if it so desires or advised. If the Appellant files an Application for restoration of the main petition within time specified by this Tribunal before the Adjudicating Authority, the same may be taken on file (if it is found to be otherwise in order) and necessary orders be passed on merits, of course by providing adequate opportunities to the parties by adhering the 'Principle of Natural Justice', within two weeks thereafter.

7. With the above observations and directions, the present Appeal stands disposed of. No costs.

[Justice Venugopal M.]  
Member (Judicial)

(Kanthi Narahari)  
Member(Technical)

*Akc/Nn*