

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**NEW DELHI**

**COMPANY APPEAL (AT) NO.364 OF 2017**

**IN THE MATTER OF:**

Vamsidhar Maddipatla & Anr

Appellants

Vs

Teckbond Laboratories Pvt Ltd & Ors

Respondents

**Present:** **For Appellant:-**Mr. Yogesh Raavi, Advocate.

**For Respondents:** - Mr T. Srinivasa Murthy with Ms Shruti Iyer, Advocates for Respondent No.2, 5 and 6.

**O R D E R**

**14.11.2017** - The appellant filed application under Section 241 of the Companies Act, 2013 before the National Company Law Tribunal Hyderabad (hereinafter referred to as the "Tribunal") alleging 'oppression and mismanagement' against the respondents. The case was taken up on different dates and nobody appeared. Finally on 9<sup>th</sup> February, 2017 the said petition was dismissed for non-prosecution, with following observations:

**"The present company petition has been filed by Mr. Vamsidhar Maddipatla and Dr. Ibrahimpatnam Krishna under Section 241 of the Companies Act, 2013 by interalia seeking following reliefs:**

- a) **To pass an order to set aside the transfer of Ac.1-17 ½ guntas of land with built up area admeasuring 3520 square feet thereon etc., Ac.1-00 guntas of land with area admeasuring 11424 square feet thereon etc., and Ac.4-30 guntas of land with built up area admeasuring 28853 square feet thereon**

and the same are registered on 03.11.2016 as documents numbers 7540/2016, 7541/2016 and 7542/2016, mentioning the consideration as Rs.50,00,000/-, Rs.1,13,62,000/- and Rs.4,10,93,000/- respectively, in favour of the Respondent No.2;

- b) To set aside the transfer of the machinery and the affixtures to the godown more specifically mentioned in the schedule annexed to this Petition;
- c) To pass interim order restraining the respondents from creating 3<sup>rd</sup> party interest over the schedule mentioned party; etc.

2. The Registry has issued notice dated 20.01.2017 vide CP No.5/241/HDB/2017/1378-1385, informing all the parties that the above case is posted for admission before the Bench on 30.01.2017. So the case was listed to 30.01.2017 for admission.

3. Neither the Petitioners nor any of their representatives were present. Shri Ramachandra Rao Gurram, appearing for Caveator (Respondent No.2) is present and accepts notice. The case was again listed on 03.02.2017. On this date also, none appears for Petitioner and only Sh Ramachandra Rao Gurrm was present. So the case was posted for dismissal on 09.02.2017.

Today also, the Petitioners nor any of their representatives appears when the case was called twice. Shri Ramachandra Rao Gurram is present.

**4. The above circumstances clearly show that the Petitioner is not interested to prosecute the case. In these circumstances, we have no alternative except to dismiss the present Company Petition for default. CP No. 5/241/HDB/2016 is dismissed for non-prosecution.**

**No order as to costs.”**

2. Being aggrieved the appellant preferred a petition for restoration under Section 241, read with Rule 48 and 11 of NCLT Rules, 2016. The Tribunal vide a detailed order dated 11.09.2017 refused to restore the Company Petition which reads as follows:

**“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 case for his non-appearance when the petition or the application was called for hearing, the Tribunal shall make an order for restoring the same:**

**Provided that where the case was disposed of on merits the decisions shall not be re-opened.**

**Rule 11 deals with inherent power of the Tribunal.**

**The above Rule clearly states that the Tribunal is empowered to restore the petition which is dismissed for default if appropriate application is filed within 30 days from the date of order provided Tribunal is satisfied with the cause shown by the party for his non-appearance.”**

3. The Tribunal observed that the application was not filed within 30 days from the date of dismissal and no petition for condonation was filed.

4. On notice the respondent have appeared and opposed the appeal on similar pleas which has been recorded by the Tribunal as noticed above.

5. From the record we find that the order of dismissal for non-prosecution was passed on 09.02.2017 and the Restoration Petition was filed on 29.6.2017.

6. Learned counsel for the appellant referred to Rule 15 of NCLT Rules, 2016 which reads as follows:

**“15 Power to extend time-The Tribunal may extend the time appointed by these rules or fixed by any order, for doing any act or taking any proceeding, upon such terms, if any, as the justice of the case may require, and any enlargement may be ordered, although the application therefore, is not made until after the expiration of the time appointed or allowed.”**

From the said Rules, we find that the Tribunal has power to extend the time appointed by the rules or fixed by any order for doing any act or taking any proceedings, upon such terms, if any, as the justice of the case may be required, although the application is not made until after the expiry of the time appointed or allowed.

7. Having heard the Learned counsel for the parties, we are of the view that it was always open to the Tribunal to extend the time appointed/fixed by the Rules and the Tribunal was empowered to restore the application in the interest of justice upon the such terms and conditions as may be imposed by the Tribunal.

8. Having heard learned counsel for the parties and taking into consideration the relevant facts and circumstances of the case, we are of the view that the appellant has made out a case for restoration, which the Tribunal itself could have done by extending the time under Rule 45 of NCLT Rules, 2016 on certain terms and conditions such as by imposing cost on the appellant.

9. For the reasons aforesaid we set aside the impugned order dated 11.9.2017 passed by Tribunal in CA No.128 of 2017 and the order dated 9.2.2017 passed in Company Petition No.5/241/HDB/2016 and restore the Company Petition No.5/241/HDB/2016 to its original file subject to the payment of cost of Rs.30000/- to be paid by the appellant in favour of the Registrar, National Company Law Appellate Tribunal, New Delhi by bank draft by 30<sup>th</sup> November, 2017. On failure this order shall stand recalled. The appeal is allowed with the aforesaid observations and directions.

(Justice S.J. Mukhopadhaya)  
Chairperson

(Justice A.I.S. Cheema)  
Member(Judicial)

(Mr. Balvinder Singh)  
Member(Technical)

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