

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 865 of 2019

IN THE MATTER OF:

Saran Equipments & Engineers Pvt. Ltd.

...Appellant

Vs.

Pioneer Fabricators Pvt. Ltd.

...Respondent

Present: For Appellant: - Mr. Mohit Nandwani and Mr. Smjdha Lal, Advocates.

For Respondent: - Mr. Yash Agarwal, Advocate.

O R D E R

19.09.2019— From the impugned order, we find that the Adjudicating Authority (National Company Law Tribunal) Court-III, New Delhi, rejected the application filed by the Appellant/ Applicant, whereby the Appellant prayed for restoration of the petition by recalling the order dated 11th April, 2019, which was dismissed for non-prosecution. However, it appears that as the counsel had not appeared on two consecutive occasions, the Adjudicating Authority refused to recall the order and did not restore the application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016.

2. It is not the question of stage at which the Appellant filed application for restoration as the application under Section 9 was never decided on merit. The Section 9 application has been dismissed for non-prosecution. It is always open to the Appellant/ Applicant to file a fresh application under Section 9. However, that will amount to increasing the number of cases. Therefore, on hearing the counsel for the parties, we are of the view that instead of giving opportunity to the Appellant to file

Contd/-.....

another application under Section 9, it was desirable to recall the order dated 11th April, 2019 and to restore the application as was filed by the Appellant/ Applicant.

3. For the reasons aforesaid, we set aside the impugned order dated 25th July, 2019 and recall the order dated 11th April, 2019 by which Petition No. IB-847/ND/2019 was dismissed for non-prosecution and restore the said petition to its original file with direction to the Adjudicating Authority to consider the application under Section 9 on merit after notice and hearing the parties. The Appellant will bring this order to the notice of the Adjudicating Authority and it will be desirable that both the parties appear before the Adjudicating Authority on 15th October, 2019 to enable the Adjudicating Authority to fix a date of admission.

The appeal is allowed. No costs.

(Justice S.J. Mukhopadhaya)
Chairperson

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

(Kanthi Narahari)
Member(Technical)

Ar/sk