

Learning Curve-1034

April 04, 2024

The assignee is entitled to all the legitimate rights exercisable under the IBC and enjoys the locus to file the restoration application before the AA.

CASE TITLE	Raj Radhe Finance Limited Vs. Shrinathji Spintx Pvt. Ltd. & Anr.
CASE CITATION	Company Appeal (AT) (Insolvency) No. 1485 of 2022
DATE OF ORDER	April 03, 2024
COURT/ TRIBUNAL	NCLAT, New Delhi

BRIEF FACTS:

Respondent No.2 filed a Sec 7 application against CD/respondent before the AA. The AA dismissed the application for non-prosecution. Respondent No.2 assigned the debt to the Appellant. The Appellant filed I.A. seeking restoration of the main company petition. The restoration application has been rejected by the AA. Aggrieved with the order of the AA, the Appellant preferred an appeal.

DECISION:

The Hon'ble NCLAT, New Delhi allowed the appeal and held that,

“We do not find any such delay or negligence on the part of the Appellant to deprive him of his statutory and legitimate right to prosecute the main company petition....”

It also held that the Appellant as an assignee was entitled to all rights exercisable under the IBC. That being the case, we are of the considered view that the Appellant clearly qualifies to be an “applicant” under the NCLT Rules and therefore enjoys the locus to file the restoration application before the Adjudicating Authority.

When an application which is dismissed for non-appearance of the petitioner can be restored on satisfying the Tribunal that he was prevented by some sufficient cause from appearing before the Tribunal, likewise, in the present facts of the case, opportunity ought not to be denied to the Appellant from seeking restoration of the main company petition which has been dismissed for non-prosecution by the original applicant. It is not in the interest of justice to deny a person the opportunity to file an application for restoration for no ostensible lapses.

Having considered the entirety of facts as on record, we are of the view that the Adjudicating Authority was not correct in dismissing the application for restoration. In the wake of the above discussion, the impugned order is set aside.”