

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

18.09.2026

Present: JUSTICE SHARAD KUMAR SHARMA, MEMBER (JUDICIAL)

ARUN BAROKA, MEMBER (TECHNICAL)

INDEVAR PANDEY, MEMBER (TECHNICAL)

COMP. APP. (AT) (INS) NO. 1924 OF 2025

(Arising out of Order dated 24.09.2025 passed by the Adjudicating Authority, National Company Law Tribunal, Division Bench, Court No. 1, in IA (Rest.)/30(AHM)2025 in C.P.(IB)/13(AHM)2025.)

IN THE MATTER OF:

Vivekanand Rai &Anr.

...Appellant

Versus

Chemie-Tech Projects Ltd.

...Respondent

Present:

For Appellant : Mr. Arijeet Banerjee, Advocate.

For Respondent : Mr. Vishwendra Verma, Advocate.

J U D G M E N T

Per Justice Sharad Kumar Sharma Member (Judicial)

The Appellants in the instant Company Appeal, had contended that they have been working with the Respondent No. 1 as their employees on a contractual basis, in the capacity of consultant for business development on which they had worked for a period of 11 months from 01.04.2020, thereafter from 03.03.2021, 28.01.2022 and 02.01.2023, and accordingly, they claimed to have worked till 25.04.2023. It was also the case by the Applicant/Appellant,

that Appellant No. 1 was working as a General Manager Business Infrastructure, in pursuance of the appointment letter, that was issued in his favour on 07.02.2019 and was employed in the said capacity till 31.10.2022. Similarly, the Appellant/Applicant No. 2, Probir Rakshit claimed to be working with Cooperate Debtor as a consultant for business development centres and worked so in the said capacity till 25.04.2023.

2. The Respondent No. 1 company is a Pvt. Ltd. company which is said to have been incorporated as such under the provisions of the Indian Companies Act, 1956, and is shown to be involved in the business of providing EPC Solutions and Services, with its registered office situated in Ahmedabad and a group head office at Sharjah.

3. It was the case of the Appellant that under the appointment letter of 07.02.2019, the Appellant was expected to receive the settled salary of Rs. 2,81,066/- before TDS deductions per month, till his resignation and relieving on 31.10.2022, and hence, according to the Appellant No. 1, his salary fell due to be paid for 17 months, amounting to Rs. 42,50,000/- and besides that, there was an unpaid Provident Fund amount of Rs. 13,40,000/- which was payable for 20 months which has not been remitted. Hence, there was a total claim raised by the Appellant No. 1 for Rs. 55, 90,000/-.

4. Similarly, the Appellant No. 2 had come up with the case that he was employed on salary of Rs. 1, 83,333/- per month, along with the reimbursement of the travel expenses, telephone expenses and other expenses, and allowances and consequent to his resignation and relieving on 25.04.2023, there was an outstanding amount due to be paid of Rs. 47,

38,056/- which fell in arrears of salary. From the unpaid salary, certain amount of TDS was also to be deducted to be payable towards the Income Tax Dues.

5. It is because of the salary dues of Appellant No. 1 totalling to about Rs. 55, 90,000/- and for Appellant No. 2 totalling to about Rs. 52,57,216/-. A proceeding under Section 9 of the Code was drawn by filing of an application before the Learned Tribunal, which was numbered as C.P.(IB)/13(AHH) 2025. The Company Petition thus preferred, it remaining pending. It's that on 05.05.2025, a Company Application was listed for final argument, and it is alleged by the Appellant that because of the sudden medical exigency, the Counsel for the Appellant had to take leave from the court premises, and hence, he was not able to appear when the case was called out. It is contended by the Appellant that its due to the sudden medical emergency of the counsel of the Appellant, he could not attend the matter on 05.05.2025, and the same was dismissed for want of prosecution.

6. The Appellant, in order to justify his diligence in pursuing the proceedings, is said to have written an e-mail communication to the Registrar of the NCLT on 09.05.2025, informing him about the reasons for his non-appearance on 05.05.2025. This is not a process contemplated under law to explain reasons for absence in a judicial proceeding. A very peculiar story has been developed by the Appellant, though it is not under any of the process contemplated under law, that the e-mail communication of 09.05.2025 was reverted by the Registrar of the NCLT orally. Its not within the ambit of jurisdiction of functioning of registrar of NCLT, to revert emails, explaining

absence in the judicial proceedings, of any of the parties involved in it. Hence not acceptable being a converted ground developed by the appellant for the purposes of restoration.

7. The theory of oral reversion of the information from Registrar on 02.07.2025, is an unestablished fact. In fact, this plea has been taken by the Appellant before NCLT to bridge the gap of the restrictions of limitation, which the Appellant would have been facing as a consequence of filing of the Restoration Application only on 02.07.2025. The Restoration Application was preferred on 02.07.2025, which was numbered as *I.A. (Restoration Application/30AHM of 2025*. The said restoration application was actually filed before the Registry of the NCLT on 15.07.2025. The application thus preferred by the Appellant was showing to have been preferred by invoking the provisions contain under Section 60(5) of IBC, 2016, which in fact was made to be read with Rule 48(2) of the NCLT Rules, 2016, i.e. the provisions which prescribes for vesting of the powers with the Tribunal for recalling its order of those proceedings, which have been dismissed for want of prosecution. In accordance with the Rule 48, which is extracted here under reads as such:-

“48. Consequence of non-appearance of applicant.-

(1) Where on the date fixed for hearing of the petition or application or on any other date to which such hearing may be adjourned, the applicant does not appear when the petition or the application is called for hearing, the Tribunal may, in its discretion, either

dismiss the applicant for default or hear and decide it on merit.

- (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 non-appearance 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.”

8. The rules prescribes for that under sub-Rule 2 of Rule 48, of the Rules, that the application has to be preferred within ‘30 days’, from the date of dismissal, and it would be maintainable only upon satisfaction being recorded pertaining to the ‘sufficiency of cause’, for non-appearance, when the proceedings was called for hearing. In the light of the provisions contained under sub-Rule 2 of Rule 48, the law specifically contemplates to provide for 30 days of time to prefer a Restoration Application. According to the Appellant himself, the Petition was dismissed on 05.05.2025, and the Restoration Application was preferred by the Appellant by filing before the Registry of NCLT only on 15.07.2025. It is this application, which has been dismissed by the Learned Tribunal by the impugned order dated 24.09.2025, against which the Appellant is before us.

9. If we simply determined the period of limitation from the date of the passing of the order of dismissal is default i.e., 05.05.2025, the Restoration Application under Rule 48 of Rules was apparently shown to have been

preferred on the 76th day, and hence, it was much beyond the prescribed period of limitation as contemplated under sub-Rule 2 of Rule 48. Besides that, the Restoration Application, at the time when it was preferred before the Ld. Tribunal on 15.07.2025, was not accompanied with any delay condonation application, and the same was accordingly dismissed by the impugned order. However, in the application, that was preferred by the appellant for seeking restoration of the company Petition by recalling of the order dated 05.05.2025, the ground as pleaded was that the counsel had suddenly fallen ill and he had to undergo a medical emergency, and because of certain leg injury, he could not remain present throughout the hearing on said date i.e., 05.05.2025, and it has been alleged by the appellant that after getting information about the dismissal on 09.05.2025, the Appellant had proceeded to file the Restoration Application on 15.07.2025.

10. The Ld. Tribunal has rejected the application primarily on the ground that once a particular act is contemplated under Rule to be taken in a particular fashion, it has to be like that only as it has been prescribed under law and not otherwise. A finding has been recorded by the Ld. Tribunal in the Impugned Order that there was a delay of about 77 days after the dismissal order of 05.05.2025, which apparently happens to be beyond limitation under Rule 48 of the rules, and more importantly, that the appellant had not sought any condonation of delay by filing of an application under Section 5 of Limitation Act, 1963. Hence, at that eventuality, it would be deemed that the Appellant by his conduct had not been able to portray the exceptional circumstances under which the dismissal order of 05.05.2025 could have

been recalled, when he himself has preferred the Restoration Application after lapse of 77 days without being supported by an independent delay condonation application. The recourse to the e-mail communication of 09.05.2025, to the Registrar was not accepted by the Ld. Tribunal, and rightly so, because it cannot be taken as to be a substantial ground for condonation of delay, particularly when the formal application for delay condonation was filed at the later stage. The Learned Tribunal, after taking into consideration the ground that was taken regarding medical exigency, did not accept the same in the absence of there being any medical documents filed, nor the same being supported by the medical certificate.

11. After hearing the Learned Counsel for the Appellant and upon perusal of the records, as well as the grounds taken by the Appellant, we are of the view that, even taking for granted when there is a Restoration Application, first of all, it ought to have been preferred within 30 days from the date of passing of the order i.e. 05.05.2025, and if it has not been so, for whatsoever reason the Appellant was restricted from filing the Restoration Application within time under law, at least, the reasonable process provided under law that the Appellant should have satisfactorily explained the delay by filing of Restoration Application. Having not done so, the Tribunal in itself by stepping into the shoes of appellant, could not have drawn an inference of the genuineness of ailment, as it was expressed in the Restoration Application, taking it as to be as a satisfactory ground for seeking a restoration. Ailment as expressed in the Restoration Application since unestablished could not be a ground for restoring the company petition, hence it could not be taken as to

be a ground to satisfactorily explain the delay that has occasioned in filing the Restoration Application.

12. Since seeking a condonation of delay by invoking Section 5 of the Limitation Act, 1963 entails a reasonable explanation of delay too, which has to be backed by satisfaction, and that was not being established by sufficient cause as prescribed under sub-Rule 2 of Rule 48 of NCLT Rules, 2016. We are of the view that until and unless the Appellant had filed a delay condonation, along with the Restoration Application, the Restoration Application in itself on merits could not have been taken into consideration because of the first embargo, which the Appellant was required to cross over under law was to satisfy the reasons for delay, and in the absence of any effort being made by the Appellant to reasonably explain the reason for delay, there was no cause for the Ld. NCLT to consider the Restoration in itself, because until and unless the delay was filed in support thereof, it could not be said that the restoration application, itself had matured to be considered on merits. Hence, the dismissal of the Restoration Application on the ground of non-seeking of a condonation of delay by filing of an application under Section 5 of Limitation Act, 1963 itself cannot be said to be vitiated, may be that there might have been a plausible ground for absence of the Counsel on 05.05.2025 but it remained unexplained in absence of delay condonation.

13. Even there is no logical reason that has been forthcoming in the application or in the arguments itself as to what held the Appellant from filing of an appropriate delay condonation application in support of the Restoration Application. Thus, the Appellant has to blame himself for his own dereliction

for not effectively contesting the proceedings, for pressing upon the Restoration Application only after seeking a condonation delay application, which admittedly has occasioned when the application was preferred after lapse of 77 days, which was to be determined from 05.05.2025. Owing to the aforesaid reason, since there was no explanation of delay, coupled with the fact that there was no supporting application filed seeking to condone the delay, be it for whatsoever reason, the Restoration itself could not be considered on its own merit because judiciously it will not subsisting to be treated to survive to be considered until and unless the first step of condonation of delay is crossed over. Hence, the Company Appeal as against the rejection of the Restoration Application due to non-filing of delay condonation application does not call for any interference. Hence, the same would stand dismissed.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Arun Baroka]
Member (Technical)

[Indevar Pandey]
Member (Technical)

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