IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

RESERVED ON: 06.05.2026
DELIVERED ON:13.05.2026

PRESENT:
THE HON'BLE MR. JUSTICE GAURANG KANTH

IA NO. GA-COM 2 OF 2024
[Old CASE NO. AP 763 OF 2023]
In AP-COM 382 OF 2024

PUBLIC HEALTH ENGINEERING DEPARTMENT, G. T. A. DARJEELING
Vs
M/S. MOHINDRA TUBES LIMITED

Appearance:

Mr. Swarnendu Ghosh, Sr. Adv.
Mr. Debdut Mukherjee, Adv.
Ms. Abhismita Goswami, Adv.
Mr. Sourav Sharma, Adv.
Mr. Souranjan Bhattacharya, Adv.

..... for the petitioner

Mr. Srijib Chakraborty, Adv.
Ms. Akanksha Mukherjee, Adv.
Ms. Sayantee Datta, Adv.
Ms. Samaita Das Chowdhury, Adv.

..... for the respondents

JUDGMENT

Gaurang Kanth, J.:-

1. This Court is seized of a Restoration Application preferred by the Petitioner in GA (Com)/02/2024, which came to be dismissed for default on 16.04.2024 on account of non-prosecution. The Petitioner also sought condonation of the seven day delay in filing the said application, which this Court condoned vide order dated 31.03.2026. When the matter was taken up for hearing on the Restoration Application, learned Counsel for the Respondent sought an adjournment on the ground that an Appeal had

been preferred against the order dated 31.03.2026 before the Hon'ble Division Bench and was likely to be listed shortly. This Court rejected the said request and proceeded to hear the matter.

2. This Court is profoundly shocked and constrained to record its strongest displeasure at the conduct of the Respondent. The Restoration Application arose from a singular and entirely inadvertent cause, the matter having been overlooked by the Petitioner's counsel in the cause list. Yet the Respondent contested it tooth and nail, deployed every conceivable procedural objection, cited a battery of judgments, and consumed over an hour of this Court's precious judicial time, all in a calculated endeavour to bury the matter at the threshold and deny the Petitioner any hearing on merits.

3. What compounded this Court's anguish was the nature of the arguments advanced on behalf of the respondent. On repeated occasions, this Court pointedly reminded the learned Counsel for the Respondent that his submissions went entirely into the merits of the underlying Section 34 Petition, a domain which this Court was not called upon to enter into at the stage of a Restoration Application. The learned Counsel, with remarkable persistence in futility, continued regardless, utterly disregarding the patient interventions of this Court. This Court is constrained to record that these are not the acts of a party seeking justice, rather they are the acts of a party seeking to deny it.

4. It is a well settled proposition that matters dismissed for non-prosecution are ordinarily restored as a matter of course, the non-appearance of counsel being universally recognised as a professional contingency that can befall any advocate. The laudable practice at the Bar has always been

one of professional courtesy, with learned counsel on both sides graciously conceding restoration and reserving their vigour for the hearing on merits. The Respondent's conduct stands in stark and disgraceful contrast to this noble tradition.

5. This Court takes this opportunity to solemnly remind the Bar that the legal profession is not merely a vocation but a sacred trust, and that the first and foremost responsibility of every lawyer is towards the Court and only thereafter to the client. Every lawyer, upon enrolment, assumes the mantle of an Officer of the Court, not as a ceremonial title, but as a solemn covenant that demands fidelity, candour, and an unwavering allegiance to the cause of justice over and above the cause of the client. An advocate who deploys every procedural weapon at his disposal not to advance a legitimate defence but to obstruct, delay, and deny, betrays his oath, disgraces his profession, and desecrates the very institution that confers upon him the privilege of audience. The Bar must be reminded and this Court says so with all the emphasis at its command that fairness is not weakness, concession is not defeat, and the greatest lawyers this nation has produced were great not merely because they argued brilliantly, but because they argued honestly and fairly. It is the utmost duty of every advocate to assist the Court in the administration of justice, to adopt fair and just practices, and to remember always that the Court is not an arena for gladiatorial combat but a temple of justice, where the search for truth and the dispensation of equity must remain the supreme and guiding purpose.

6. With these observations, this Court proceeds to decide the Restoration Application in GA (Com)/02/2024.

Facts

7. The facts leading to the present proceedings are as follows.

8. The Petitioner, the Public Health Department, Gorkhaland Territorial Administration, issued a Work Order in favour of the Respondent, who was the successful bidder, for the supply of G.I. Pipes for a drinking water project in the hills of Darjeeling under the GTA. The Respondent raised bills aggregating to Rs. 24,79,77,419/-, against which the Petitioner made payment of Rs. 24,37,41,271/-, leaving an unpaid balance. Being aggrieved by the non-payment of the said balance, the Respondent, on 25.02.2022, instituted proceedings being Case No. 106/2021 before the West Bengal Micro, Small and Medium Enterprises Facilitation Council, claiming: (i) unpaid principal of Rs. 42,36,863/-; (ii) refund of TDS amounting to Rs. 5,48,139/-; (iii) interest of Rs. 11,40,86,605.51/- from the date the amounts fell due until the date of filing; and (iv) further interest from 01.10.2020 till the date of filing of the said application.

9. The West Bengal MSME Facilitation Council conducted online hearings on 25.08.2022 and 17.01.2023, and thereafter passed an ex-parte Award dated 13.06.2023.

10. Being aggrieved by the said ex-parte Award, the Petitioner challenged the same by preferring AP No. 763/2023 under Section 34 of the Arbitration and Conciliation Act, 1996, which was subsequently renumbered as AP (Com)/382/2024.

11. Simultaneously, the Petitioner filed an application under Section 36(2) of the Act seeking stay of the operation of the Award dated 13.06.2023. This Court, vide order dated 18.12.2023, disposed of the said application by directing the Petitioner to furnish security for the Award amount of Rs.

13,31,16,818/- within a period of five weeks, 75% thereof by way of Bank Guarantee and the remaining 25% by way of cash deposit.

12. The Petitioner failed to comply with the said order and did not furnish the security as directed.

13. AP (Com)/382/2024 was thereafter listed before this Court on 01.04.2024. On the said date, neither party appeared, and the matter was adjourned as a last chance. When the matter was next listed on 16.04.2024, there was no appearance on behalf of the Petitioner, and accordingly, AP (Com)/382/2024 came to be dismissed for non-prosecution.

14. Being aggrieved by the dismissal, the Petitioner filed a Restoration Application being GA (Com)/02/2024, accompanied by GA (Com)/01/2024 seeking condonation of a delay of seven days in filing the said Restoration Application. Both applications were filed on 24.05.2024 with a request for listing on 12.06.2024. However, the said applications were never placed before this Court until 31.03.2026.

15. It is pertinent to note that in the interregnum, the Respondent instituted Execution Proceedings being EC (Com)/130/2024. In pursuance of the directions issued in the said proceedings, the bank accounts of the Petitioner were attached, and the Respondent has already recovered a sum of Rs. 1,88,53,765/- from the Petitioner.

16. It is in the backdrop of these facts that this Court now proceeds to decide the Restoration Application in GA (Com)/02/2024.

GA (Com)/02/2024

17. The present application has been filed by the Petitioner seeking restoration of AP (Com)/382/2024, which was dismissed for non-prosecution by this Court vide order dated 16.04.2024.

Submissions on behalf of the Petitioner

18. Learned Counsel for the Petitioner submits that A.P. (Com.) No. 382 of 2024 was listed before this Court on 01.04.2024 and thereafter on 16.04.2024. On both dates, no appearance was made on behalf of the Petitioner. It is submitted that on each of the said dates, the Counsel for the Petitioner inadvertently missed the matter in the cause list and was consequently unable to be present when the matter was called out. As a result of the absence on 16.04.2024, this Court was pleased to dismiss the matter for want of prosecution.

19. It is submitted that the non-appearances on the aforesaid dates were wholly inadvertent, occasioned by a bona fide oversight, and were not attributable to any willful default, negligence, or deliberate absence on the part of the Petitioner or its Counsel. It is further submitted that save and except for the aforesaid dates, the Petitioner has been otherwise diligent and regular in prosecuting the present matter before this Court.

20. It is submitted that the impugned ex-parte award was passed against the Petitioner by the West Bengal Micro, Small and Medium Enterprises Facilitation Council without affording any prior notice of hearing to the Petitioner, in clear violation of the principles of natural justice and fair hearing. Furthermore, the said award imposes an exorbitant interest liability wholly disproportionate to the principal amount in dispute. While the principal sum is approximately Rs. 42 Lakhs, the interest component, computed at the statutory rate prescribed under the Micro, Small and Medium Enterprises Development Act, 2006, has resulted in a liability

grossly and manifestly disproportionate to the actual claim. It is to assail the said award that the Petitioner instituted A.P. (Com.) No. 382 of 2024 before this Court.

21. It is further submitted that the Petitioner is a public authority and, as such, is subject to procedural and financial constraints that are not ordinarily applicable to private entities. On account of non-availability of requisite funds within the stipulated period, the Petitioner was unable to comply with the direction to deposit the pre-deposit amount as contained in the order dated 18.12.2023. It is respectfully submitted that the said non-compliance was purely on account of financial constraints and was not occasioned by any willful or contumacious conduct, nor by any deliberate attempt to circumvent or disobey the orders of this Court.

22. The Petitioner submits that the requisite funds have since been arranged and that the Petitioner is now ready, willing, and in a position to deposit the pre-deposit amount as mandated under Section 19 of the Micro, Small and Medium Enterprises Development Act, 2006, subject to such directions as this Court may deem fit and proper to issue in that behalf.

23. It is further submitted that the Petitioner has a strong and arguable case on merits, and that restoration of the present application would afford the Petitioner a just and meaningful opportunity to present its case before this Court. It is also a matter of significant relevance that the Respondent has already recovered a sum of approximately Rs. 1.88 Crores from the Petitioner, which is more than four times the principal amount in dispute.

24. Learned Counsel for the Petitioner further places reliance upon the decision of the Hon'ble Delhi High Court in ***Central University of Jharkhand v. King Furnishing & Safe Co.***, reported as ***2024 SCC OnLine Del 1472***,

in support of the proposition that mere non-compliance with the requirement of pre-deposit of 75% of the awarded amount, as contemplated under Section 19 of the Micro, Small and Medium Enterprises Development Act, 2006, does not, ipso facto, warrant or justify the outright dismissal of a petition filed under Section 34 of the Arbitration and Conciliation Act, 1996. It is submitted that the proper and legally sound course of action, consistent with the ratio of the said decision, is to list the matter before the Court and, in the exercise of its judicial discretion, direct the parties to make the requisite pre-deposit, the consequence of non-compliance being that the petition may thereafter be declined to be heard, but the petition cannot and ought not to be dismissed at the threshold solely for want of pre-deposit.

25. In light of the aforesaid submissions, it is prayed that this Court may be pleased to allow the present application, restore A.P. (Com.) No. 382 of 2024 to its original position on the board, and permit the Petitioner to deposit the requisite pre-deposit amount under Section 19 of the Micro, Small and Medium Enterprises Development Act, 2006, in the interest of justice, equity, and good conscience.

Submissions on behalf of the Respondent

26. Learned Counsel for the Respondent vehemently opposed the Restoration Application. A detailed list of dates and events was filed on behalf of the Respondent. The following submissions were advanced in opposition:

(i) Non-maintainability of the underlying Section 34 Petition on account of non-compliance with Section 19 of the MSMED Act:

Learned Counsel for the Respondent submits that the Petitioner is challenging an Award passed by the West Bengal Micro, Small and

Medium Enterprises Facilitation Council, and that in view of Section 19 of the Micro, Small and Medium Enterprises Development Act, 2006, the deposit of 75% of the awarded amount is a mandatory statutory pre-condition before a petition challenging such an Award can be entertained or taken up for hearing.

It is submitted that this Court, vide order dated 18.12.2023, had expressly directed the Petitioner to deposit the principal awarded amount together with accrued interest thereon, with which the Petitioner admittedly failed to comply. It is accordingly contended that AP (Com)/382/2024 is not maintainable in the absence of such compliance, and that no restoration application is therefore sustainable in respect of a non-maintainable petition.

In support of this submission, the Respondent places reliance upon the decision of this Court in **AP No. 202/2015, *Developments Consultants Pvt. Ltd. v. Rama Engineering***, and the decision of the Hon'ble Madras High Court in **Arbitration Application (Com. Div.) No. 369/2025, *Numaligarh Refinery Ltd. v. M/s Solar Design Pvt. Ltd.***, wherein petitions under Section 34 of the Arbitration and Conciliation Act, 1996 were dismissed on the ground of non-compliance with the mandatory pre-deposit requirement under Section 19 of the MSMED Act, 2006.

(ii) Delay in filing the Section 34 Petition beyond the statutory period:

Learned Counsel for the Respondent submits that the application under Section 34 of the Arbitration and Conciliation Act, 1996 was itself filed beyond the statutory period of ninety days, specifically on the 116th day, thereby rendering the petition prima facie barred by limitation and

further demonstrating the lack of diligence on the part of the Petitioner in pursuing the matter.

(iii) Gross lack of diligence in prosecuting the Restoration Application:

Learned Counsel for the Respondent submits that notwithstanding the filing of the Restoration Application with a delay of seven days, the Petitioner made no effort whatsoever to have the said application listed before this Court, and did not take any steps to mention the matter for a period of nearly two years. It is submitted that such prolonged inaction disentitles the Petitioner to the relief of restoration.

In support of this submission, the Respondent places reliance upon the decision of this Court in ***Smt. Gitarani Rakshit v. State of West Bengal,*** reported as **2012 SCC OnLine Cal 13229**, and the order dated 04.01.2018 passed by the Hon'ble Division Bench in MAT 1489/2017, ***Ramkripal Hella & Ors. v. The State of West Bengal & Ors***.

(iv) Part satisfaction of the Award through Execution Proceedings:

Learned Counsel for the Respondent submits that the Respondent has already instituted Execution Proceedings being EC (Com)/130/2024, pursuant to which this Court directed attachment of the bank accounts of the Petitioner, and the Respondent has consequently recovered a sum of Rs. 1,88,53,765/- in partial satisfaction of the Award. It is submitted that this subsequent development is a relevant and material circumstance that this Court ought to bear in mind while considering the Restoration Application.

(v) Objections as to the conduct of the Petitioner:

Learned Counsel for the Respondent further raised objections with respect to the overall conduct of the Petitioner in the present proceedings, contending that the Petitioner has throughout demonstrated a pattern of negligence, non-compliance, and lack of bona fides in prosecuting this matter.

(vi) Objection to the Supplementary Affidavit:

Learned Counsel for the Respondent also raised objection to the Supplementary Affidavit filed by the Petitioner to the Restoration Application, by which the Petitioner sought to place on record subsequent developments that had occurred between the filing of the Restoration Application in 2024 and its eventual hearing in 2026.

(vii) Reliance on judicial precedents on the principles of restoration and condonation:

In further support of his submissions, Learned Counsel for the Respondent placed reliance upon the decision of the Constitution Bench of the Hon'ble Supreme Court in ***Collector of Monghyr & Ors. v. Keshav Prasad Goenka & Ors.,*** reported as ***1962 SCC OnLine SC 93***, as well as the recent decision of the Hon'ble Supreme Court in Civil Appeal No. 4835/2023, ***Yadaiah & Anr. v. State of Telangana & Ors.***, to substantiate the Respondent's case in opposition to the grant of restoration.

Legal Analysis

27. This Court has carefully considered the submissions advanced by the learned Counsel for both parties, perused the materials placed on record,

and applied its mind to the judgments cited at the Bar. The following issues fall for consideration in the present Restoration Application:

(i) Whether the non-appearance of the Petitioner's Counsel on 16.04.2024 constitutes sufficient cause for restoration of AP (Com)/382/2024?

(ii) Whether the underlying Section 34 Petition is non-maintainable on account of non-compliance with the mandatory pre-deposit requirement under Section 19 of the MSMED Act, 2006, and if so, whether such non-maintainability is a bar to the maintainability of the present Restoration Application?

(iii) Whether the Petitioner's failure to prosecute the Restoration Application diligently for a period of nearly two years disentitles it to the relief of restoration?

28. The first and most fundamental question before this Court is whether the Petitioner has demonstrated sufficient cause for the dismissal of AP (Com)/382/2024 for non-prosecution on 16.04.2024. The Petitioner's explanation is straightforward and uncontroverted, the Counsel for the Petitioner inadvertently missed the matter in the cause list. This Court finds the said explanation to be bona fide, plausible, and consistent with the realities of legal practice. Courts across the country have consistently and repeatedly held that missing a matter in the cause list is a sufficient and valid reason for non-appearance, and that such inadvertence cannot be treated as wilful neglect or deliberate abandonment of proceedings.

29. It is a well settled principle that the power to restore a matter dismissed for default is an inherent and salutary power vested in every court, to be exercised in furtherance of the cardinal objective of adjudicating disputes on merits. The dismissal of a matter for non-prosecution is not intended to

be a punishment; it is a procedural consequence designed to maintain the discipline of court proceedings. When a satisfactory explanation is offered, as has been done in the present case, courts must lean in favour of restoration, for justice delayed is justice denied, but justice foreclosed is justice destroyed.

30. The Respondent's contention that the Petitioner was not diligent, inasmuch as the Section 34 Petition was filed on the 116th day, does not bear upon the question of whether the Restoration Application deserves to be allowed. The delay in filing the Section 34 Petition is a matter to be adjudicated on its own merits at the appropriate stage of the hearing of AP (Com)/382/2024. It has no bearing on, and cannot be conflated with, the narrow and distinct question of whether sufficient cause exists for restoration of a matter dismissed for non-appearance of counsel. This Court accordingly rejects the said contention as being irrelevant to the issue at hand.

31. The most strenuously urged contention on behalf of the Respondent is that the Petitioner's failure to comply with the mandatory pre-deposit requirement under Section 19 of the Micro, Small and Medium Enterprises Development Act, 2006 renders A.P. (Com.) No. 382 of 2024 itself non-maintainable, and that no restoration can therefore be granted in respect of a petition that is, on the Respondent's own case, fundamentally incompetent. In support of this submission, the Respondent has placed reliance upon the decisions of this Court in ***Developments Consultants Pvt. Ltd. v. Rama Engineering*** (supra) and ***Numaligarh Refinery Ltd. v. M/s Solar Design Pvt. Ltd.*** (supra).

32. This Court is unable to accept the aforesaid contention, for the reasons that follow. The question of whether the Petitioner has complied with the mandate of Section 19 of the Micro, Small and Medium Enterprises Development Act, 2006, and the legal consequence of any such non-compliance upon the maintainability or hearing of A.P. (Com.) No. 382 of 2024, is a substantive question that goes directly to the merits of the underlying Section 34 Petition. It is a question that falls squarely within the domain of adjudication of A.P. (Com.) No. 382 of 2024 on merits, and not within the narrow and limited compass of a Restoration Application. A Restoration Application is concerned solely with whether sufficient cause has been shown for restoration of the dismissed matter, it neither permits nor warrants any merits based examination of the underlying petition. To permit the Respondent to raise and have adjudicated, at the stage of a Restoration Application, the very contentions that go to the merits of the main petition, would be to allow the tail to wag the dog. It would render the eventual hearing of the Section 34 Petition wholly otiose and deprive the Petitioner of any meaningful opportunity of being heard on the substantive challenge to the impugned award, an outcome that would be plainly contrary to the principles of natural justice.

33. Although the question of mandatory pre-deposit under Section 19 of the Micro, Small and Medium Enterprises Development Act, 2006 is not, strictly speaking, a matter that falls for consideration at the stage of a Restoration Application, the Respondent has strenuously urged this point before this Court and detailed arguments have been advanced by both sides on the said question. In these circumstances, this Court deems it appropriate to examine whether non-compliance with the mandatory pre-

deposit requirement under Section 19 of the Act renders a petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 liable to be dismissed as defective or incompetent at the threshold.

34. This Court is fortified in its view by the decision of the Delhi High Court in ***Central University of Jharkhand v. King Furnishing & Safe Co.*** (supra), relied upon by the Petitioner, which authoritatively lays down that mere non-compliance with the pre-deposit requirement under Section 19 of the Micro, Small and Medium Enterprises Development Act, 2006 does not, ipso facto, warrant the outright dismissal of a petition filed under Section 34 of the Arbitration and Conciliation Act, 1996. The correct procedure, as held therein, is for the Court to list the matter, consider the question of pre-deposit in the exercise of its judicial discretion, and issue appropriate directions for compliance, the petition being heard only upon such compliance. This position, in the considered view of this Court, is not only legally sound and in conformity with the text and spirit of the statute, but is also consistent with the principles of natural justice and the overarching legislative object of the Arbitration and Conciliation Act, 1996, which is to ensure that disputes are resolved effectively, fairly, and expeditiously, and are not extinguished at the threshold on purely procedural grounds, without affording the parties a hearing on the merits.

35. The decisions relied upon by the Respondent in ***Developments Consultants Pvt. Ltd.*** (supra) and ***Numaligarh Refinery Ltd.*** (supra) are, in the considered opinion of this Court, clearly distinguishable on facts and do not advance the Respondent's case. In both those cases, the petitions came to be dismissed on merits after the respective Courts had heard the parties at length on the question of pre-deposit. They were

decidedly not cases where a Restoration Application was being resisted on the ground of non-compliance with the pre-deposit requirement under Section 19. The proposition that non-compliance with Section 19 of the Micro, Small and Medium Enterprises Development Act, 2006 ipso facto bars the entertainment or allowing of a Restoration Application is neither supported by the plain text of the statute, nor by any binding or persuasive judicial authority placed before this Court. This Court accordingly declines to accept the said proposition.

36. The Respondent has urged, with considerable force, that the Petitioner demonstrated gross lack of diligence in failing to mention or get listed the Restoration Application for a period of nearly two years from its filing in May 2024 until its eventual listing in March 2026. Reliance has been placed upon ***Gitarani Rakshit*** (supra) and ***Ramkripal Hella*** (supra) in support of the proposition that prolonged inaction disentitles a party to the relief of restoration.

37. This Court has considered this submission carefully. It is pertinent to note that the Restoration Application and the application for condonation of delay were filed on 24.05.2024, with a specific request for listing on 12.06.2024. There is nothing on record to show that the non-listing was attributable to any act or omission on the part of the Petitioner. Accordingly, this Court is not inclined to penalise the Petitioner for the administrative delay in listing. The Petitioner cannot be held responsible for the failure of the matter to appear on the board, particularly when the application had been duly filed and a specific date had been requested. In any case, due to the non listing of the present applications, the Petitioner

has already suffered attachment of Bank accounts and the Respondent has already recovered more than 1.88 Cr.

38. The judgments relied upon by the Respondent are distinguishable. In ***Gitarani Rakshit*** (supra) and ***Ramkripal Hella*** (supra), the inaction was attributable to the deliberate omission of the party seeking relief. In the present case, the Petitioner had taken the step of filing the applications and requesting a specific listing date. The subsequent non-listing is not a circumstance that can be laid at the Petitioner's door. This Court therefore declines to non-suit the Petitioner on this ground.

39. The Respondent has placed before this Court the factual position that it has already recovered a sum of Rs. 1,88,53,765/- through Execution Proceedings in EC (Com)/130/2024. This Court notes this development. However, the pendency of Execution Proceedings and the partial recovery of the Award amount does not extinguish the Petitioner's right to challenge the Award under Section 34 of the Act. The right of challenge under Section 34 is a statutory right, and the fact that the Respondent has been able to execute a part of the Award in the interregnum is not a ground to deny the Petitioner its statutory remedy. These are matters that shall appropriately be addressed at the stage of hearing of AP (Com)/382/2024 on merits.

40. The objection raised by the Respondent to the Supplementary Affidavit filed by the Petitioner is noted but not sustained. The Supplementary Affidavit was filed to bring on record subsequent developments that had occurred between the filing of the Restoration Application in 2024 and its hearing in 2026. Given the unusual gap of nearly two years between the filing and the listing of the Restoration Application, this Court finds that

the filing of the Supplementary Affidavit was a bona fide and necessary step to apprise this Court of the current state of affairs. No prejudice has been caused to the Respondent by the filing of the said affidavit.

41. The Respondent has placed reliance upon the Constitution Bench decision in ***Collector of Monghyr & Ors.*** (supra), and the recent decision in ***Yadaiah & Anr.*** (supra). This Court has carefully perused the said decisions. The principles enunciated therein pertain to the exercise of discretion in matters of condonation of delay and restoration, and broadly emphasise that sufficient cause must be shown and that courts ought not to routinely condone deliberate or unexplained inaction. This Court is in respectful agreement with those principles. However, applying those very principles to the facts of the present case, this Court finds that the Petitioner has demonstrated sufficient cause, the non-appearance was due to inadvertence, the Restoration Application was filed promptly, and the delay in listing was not attributable to the Petitioner. The said decisions, far from assisting the Respondent, in fact support the exercise of discretion in favour of the Petitioner in the peculiar facts and circumstances of the present case.

42. For all the foregoing reasons, this Court is of the considered view that the present Restoration Application deserves to succeed and is accordingly allowed. This Court is satisfied that the Petitioner has demonstrated sufficient cause for the non-appearance on 16.04.2024, and that the dismissal of A.P. (Com.) No. 382 of 2024 for want of prosecution was occasioned by an inadvertent oversight on the part of the Petitioner's Counsel and not by any willful default or negligence. The objections raised

by the Respondent in opposition to the present application are found to be without merit and are hereby rejected

43. Accordingly, GA (Com)/02/2024 is allowed. AP (Com)/382/2024 is restored to its original number.

44. The present application stands disposed of.

AP (Com)/382/2024

Let the matter be listed on 15.05.2026 for hearing.

(GAURANG KANTH, J.)

SAKIL AMED P.A.

High Court Calcutta