

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) No.295 of 2026

In the matter of:

Rajib Dhamija

...Appellant

Vs.

Alliance Broad Band Services Pvt. Ltd. &Ors.

...Respondents

Present:

Appellant: Mr. Samar Bansal, Sr. Advocate with Mr. Supratik Sarkar,
Advocate

Respondent: Mr. Ratnanko Banerjee, Sr. Advocate with Mr. Riyanshu
Agarwal, Ms. Swapna Choubey, Mr. Kanishk Kejriwal,
Advocates

O R D E R
(Hybrid Mode)

12.08.2026 - It is a very short issue that engages our consideration in the instant Company Appeal, wherein the appellant challenges the impugned order dated 04.05-2026, passed by the learned NCLT, Kolkata Bench, in Restoration Application (COMPANIES ACT)/7(KB)2025, preferred in CP/15(KB)2022. The effect of the impugned order had been that, the restoration application preferred by the appellant/applicant was dismissed resulting into the absolute closure of the proceedings under Sections 241 and 242 of the Companies Act, 2013, without venturing on the merits of the controversy.

2. The precise facts, which are germane to the present proceedings are that the appellant had instituted a company petition, being CP/15(KB) 2022 by invoking the provisions contained under Sections 241 and 242 of the Companies Act, 2013. At the time of institution of the proceedings on 11.01.2022, the

company petition, was accompanied by an application for waiver by invoking the provisions contained under Section 244 of the Companies Act, 2013.

3. The learned Tribunal, while taking cognizance to the proceedings, had initially issued notice to the respondent and reply was called upon on the application under Section 244 of the Companies Act, as well as on the Company Petition. The learned Tribunal, in its proceedings has recorded that, the application filed under Section 244 of the Companies Act, 2013 for the grant of waiver, would be considered after the exchange of pleadings, which would be inclusive of the pleadings to the proceedings to the company petition also.

4. No reply was filed and the last opportunity was granted by the learned Tribunal to the respondents by passing an order of the said effect on 23.03.2023, consequent to which, on 26.06.2023, the reply was filed by the respondent, which was responded by the appellant by filing his rejoinder to it. By the next date the proceedings were taken up on 14.03.2024, the pleadings have already exchanged hands and thereafter, on couple of occasions, when the company petition was listed before the learned Tribunal, the same could not be reached, on account of paucity of time, till ultimately, the Company Petition was taken up on. When the company petition was taken up on 21.03.2025, the learned Tribunal has proceeded to pass an Order, dismissing the company petition for want of prosecution. If we scrutinize the order dated 21.03.2025, it is rather contradictory in nature, for the reason being that in the opening line, the learned Tribunal observes that the Counsel for the petitioner was present and thereafter,

simultaneously, it had dismissed the CP for want of prosecution. The relevant extract of the order is given hereunder: -

“O R D E R

1. *Ld. Counsel appearing for the petitioner present.*

2. It is submitted by Ld. Counsel Ms. Swapna Choubey appearing for the respondent that no one has been entering appearance for the Petitioner for quite some time. The last appearance was made by the petitioner was on 09th May, 2024, therefore it seems the petitioner is not interested to pursue the matter any further.

3. Accordingly, we dismissed the main matter for non-prosecution with all connected CA's.”

5. At this stage, it would be relevant to mention that the date on which the company petition was dismissed for want of prosecution i.e. on 21.03.2025, the learned Tribunal was considering the proceedings under Section 213, Section 241(1), 242 (4) and 244(1) of the Companies Act, 2013, inter alia meaning that the waiver application, too was also a subject matter, under consideration before the learned Tribunal when the company petition was dismissed for want of prosecution.

6. Seeking its recall, the appellant had filed a restoration application on 17.04.2025 i.e. within 27 days of the Order, praying for recall of the order dated 21.03.2025 and to restore the company petition to its original number, to be adjudicated on merits.

6. The restoration application was opposed. The respondents filed their objection to the Restoration Application. Subsequently, when on 04.05.2026, the Restoration Application was listed, the learned Tribunal proceeded to reject the same by virtue of the impugned Order. Hence the present Company Appeal.

7. If we scrutinize the principal Order of 21.03.2025, dismissing the company petition for want of prosecution, it was on a simplistic ground that, since none has appeared for the appellant to press the proceedings before the learned Tribunal, it proceeded to dismiss the petition. When the appellant had filed the Restoration Application, the appellant had contended therein the application that, the absence of the appellant on 21.03.2025 was not deliberate or intentional, it was pleaded in para – 14 of the Restoration Application that, on the date when the matter was listed i.e. 21.03.2025, it skipped the attention of the petitioner to take note of the listing of the matter and it was due to human inadvertence, the appellant could not attend the proceedings on the said date. The appellant contended that, the impression that was created by the respondents in their objection, as well before the learned Tribunal, when the company petition was taken on 21.03.2025, as if the appellant was not interested to pursue the company petition, which in fact, was contrary to the records because on couple of earlier dates, it was not that the appellant who had failed to appear, but rather, the company petition could not be taken up because of the paucity of time and for that reason, the appellant cannot be attributed with any malice or be burdened with the responsibility.

8. The restoration application, thus preferred on 17.04.2025 came up for consideration before the learned Tribunal and the same has been rejected by the impugned Order dated 04.05.2026.

9. The argument of the learned Counsel for the appellant while questioning the impugned Order as passed on the restoration application is that, at the stage when the Tribunal was considering the restoration application, it ought to have confined itself to record its findings on the propriety of the appellant's absence on 21.03.2025 and the reasons connected to it. No other issue touching the merits of the matter or rights accrued between the parties sought to have been enforced in the company petition, could at all have been derived or ventured into by the learned Tribunal at the stage, when the restoration application was being considered. The procedure adopted by the learned Tribunal, would be per-se contrary to the law, because it is a settled principal that, on the date when the restoration application was being considered, there was no company petition existing in the eyes of law due to its dismissal for want of prosecution on 21.03.2025 and as such until and unless, the Tribunal first proceeds to recall the said order on the application preferred by the appellant, the Tribunal ought not to have recorded the finding of facts, based or touching upon on the merit of the matter for the purposes of deciding the restoration application. The very fact that the learned Tribunal has proceeded to venture into the merits of the matter recording findings, touching the merits of the company petition, that was not called for as at that stage of time. The scope of scrutiny of learned Tribunal was

only confined to, whether the absence of the appellant on 21.03.2025 was due to valid reasons or not.

10. The learned Tribunal wrongly took a view that, since on previous couple of occasions, the appellant had not appeared that has been derived to be read against the appellant. The same was answered by the Counsel for the appellant that, the finding recorded with regards to the earlier proceedings prior to 21.03.2025, may not be a correct interpretation assigned by the learned Tribunal, for the reason that it was a consistent case of the appellant as specifically mentioned in paragraphs – 8 and 9 of the restoration application that on the earlier date fixed the matter could not be taken up on account of paucity of time, as the learned Tribunal being engaged in other pending matters. Not taking up of the company petition on merits on those dates cannot be taken as to be a dereliction or absence of the appellant, which could be borrowed for the purposes of deciding the instant restoration application.

11. Even otherwise also, it was a settled principal of law that, even if we presume for the time being, that the appellant had remained absent for a couple of earlier hearings, that itself cannot be derived to be taken as a basis to reject the application and more particularly, when the factum of absence as pleaded by the appellant in the application was a fact not strongly or sustainably denied by virtue of supporting of credible evidence. A unilateral inference drawn that the appellant was not interested in prosecuting the said proceedings of the

Company Petition, was a self-articulated observations made by the learned Tribunal, without there being any pleading to the contrary.

12. The finding recorded by the learned Tribunal for deriving it as reason to reject the application, is his past absence in the proceedings. This cannot be taken as to be basis, as the learned Tribunal ought to have considered restoration application on its merits, rather than diving into the past proceedings to take its wreckage as the basis to reject the application. Law has settled that the application has to be considered on its own merits, past conduct of the appellant, should not have affected or influenced the decision on the restoration application as they become irrelevant. This is what has been laid down in the matters of *Qaiser Sibtain vs District Judge, Allahabad* (1996 SCC OnLine All 137) by the Hon'ble Single Judge of Allahabad High Court as decided in the matters reported as: -

“6. In exercise of revisional jurisdiction, High Court never interferes with the concurrent findings of facts unless the same appears to be perverse. The above proposition is well established proposition with which there is no scope for any two opinion. In the present case, the facts have been found by both the courts below against the petitioner, and, therefore, I refrain from interfering with the fact so found. But the fact remains that while considering the question, the revisional court has dealt with the past conduct of

defendant No. 11. It is established principle of law that while considering the question of grant of adjournment or recalling of an order, the past conduct is immaterial. The court has to look into the merit of the case confining to the date of the order sought to be recalled was passed. The court has to look out whether sufficient ground has been made out for the default on the very date or not. Looking into the past conduct would be an extraneous consideration which the court should not go into. In that view of the matter, taking into account the past conduct does not seem to me to be fair and correct approach adopted by the learned court below.”

Further, the findings are perverse that, the appellant has not been diligently participating in the proceedings since 03.07.2024. But as per the extract of records, shown in the impugned order, all the dates after 03.07.2024 till 16.12.2024, it was rather the learned Tribunal’s inability to take the matter due to paucity of time, it does not record the absence of appellant. One more astonishing feature, which is apparent on record from the findings recorded by the learned Tribunal that, the learned Tribunal had not considered what happened between 14.03.2024 till 09.05.2025 i.e. almost over one year. This itself would render the Judgement to be perverse.

13. Owing to the above facts, that has been given in the Restoration Application, as well as the grounds taken in the instant company appeal, we are of the view that the Order dated 04.05.2026 dismissing the Restoration Application, while venturing on the merits of the Company Petition, is not justified in the eyes of law, as it was stretching the issue beyond the subject that, was being considered by the learned Tribunal on 04.05.2026 i.e. on the Restoration Application. In that eventuality, the learned Tribunal ought to have confined itself to the merits of the Restoration Application only, and not on the merits of the Company Petition for the purposes to derive the reasons to reject the Restoration Application.

14. Because of what has been stated in the memorandum of appeal, as well as in the Restoration Application, we feel that the impugned Order of 04.05.2026 cannot be sustained because the learned Tribunal has exceeded its jurisdiction of deciding the issue on merits at the stage of considering the Restoration Application and thus has travelled beyond its jurisdiction at the stage when the restoration was being considered by the learned Tribunal. Thus the impugned Order of 04.05.2026 rejecting the Restoration Application and the Order of 21.03.2025 dismissing the Company Petition for want of prosecution would stand quashed.

15. The Company Petition being CP/15(KB)022 presently pending consideration before the NCLT Bench, Court-1, Kolkata i.e. being directed to be restored on its original number to be considered on merits from the stage from

where the company petition was dismissed for want of prosecution i.e. on 21.03.2025, and proceed to decide the Company Petition on its own merits. Subject to the above, the Company Appeal stands allowed.

Accordingly, the Company Appeal is disposed of.

All pending interlocutory applications stand closed.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Arun Baroka]
Member (Technical)

[Indevar Pandey]
Member (Technical)

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