

Insolvency and Bankruptcy Board of India

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5th June, 2023

Subject: Judgment¹ dated 25th May 2023 of five judge bench of National Company Law Tribunal, New Delhi in the matter of Union Bank of India (Erstwhile Corporation Bank) Vs. Dinkar T. Venkatasubramanian & ors. IA No.3691 of 2022 in CA (AT) (Ins.) No. 729 of 2020

I. Brief Background

Corporate Insolvency Resolution Process was initiated by FC against Amtek Auto Ltd. (“CD”). Resolution Plan was submitted and was approved by the CoC with requisite majority vote. Adjudicating Authority approved the resolution plan filed by the Resolution professional (“RP”). However, the reliefs prayed for by the FC in the IA, was rejected by AA. Aggrieved by the order of AA, appeal filed by the FC before NCLAT with out impleading the Committee of Creditors was partly allowed. The FC filed appeal against the NCLAT judgment before the Hon’ble Supreme Court and the same was dismissed as withdrawn with the liberty to file a review application.

Consequently, the Review Application filed by the FC was dismissed by the NCLAT holding that there is no provision for review under the Code and the FC may take recourse in accordance with law, if it is aggrieved. The FC, has filed the present IA seeking to recall the order partly allowed by the NCLAT.

Up on reference by the three-member bench of the Appellate Tribunal, a five-member bench of the same Tribunal was constituted for considering the following three.

II. Questions:

1. Whether this Tribunal not being vested with any power to review the judgment can entertain an application for recall of judgment on sufficient grounds?
2. Whether judgment of this Tribunal in “Agarwal Coal Corporation Private Limited Vs Sun Paper Mill Limited & anr.” and “Rajendra Mulchand Varma & Ors Vs K.L.J Resources Ltd & Anr.” can be read to mean that there is no power vested in this Tribunal to recall a judgment?

III. Observations:

(a) The Appellate Tribunal while considering judgments of Hon’ble Supreme which clearly lays down the distinction between the review and recall. The power of review is not conferred up on the Tribunal; whereas the power to recall its judgment is inherent in it. Rule 11 of NCLAT Rule, 2016 expressly provide for inherent powers to the Appellate Tribunal.

(b) On the question of powers of the Tribunal to recall its judgment, it was held that the view taken by the three-member bench of the Appellate Tribunal does not lay down the correct. The five-member bench while answering the questions held that power to recall a judgment is inherent in terms of Rule 11 of the NCLAT Rules, 2016.

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