

**IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH
CUTTACK**

**CA (IB) No. 87/CTB/2019
Arising out of
IA (IB) No. 21/CTB/2019
-IN-**

**TP No. 40/CTB/2019
Arising out of
CP (IB) No. 24/KB/2018**

**CORAM: 1. Ms. Sucharitha R. Member (J)
2. Shri Satya Ranjan Prasad, Member (T)**

**In the Matter of:
Insolvency and Bankruptcy Code, 2016.**

-And-

**In the Matter of:
An application under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016.**

-And-

**In the Matter of:
STATE BANK OF INDIA, a statutory body constituted under the State Bank of India Act, 1955 having its Stressed Assets Management Branch at 8th Floor, 11 & 13 Shakespeare Sarani, Kolkata – 700 001.**

... .. Applicant/Petitioner

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-Versus-

In the Matter of:

M/s VISA STEEL LIMITED, a company incorporated under the Companies Act, 1956 having its registered office and carrying on business at Visa House, 11, Ekamra Kanan, Nayapalli, Bhubaneswar – 751 015.

... .. **Respondent**

Counsels appeared for the Petitioner (s): -

1. Mr. Jaganath Patnaik, Sr. Adv.
2. Mr. Avijit Patnaik
3. Mr. Shruva Mohapatra
4. Mr. S.S. Pradhan

Counsels appeared for the Respondent (s): -

1. Mr. Sabyasachi Chowdhury, Adv.
2. Mr. Patita Paban Bishwal, Adv.
3. Mr. Tridip Bose, Adv.

Date of pronouncement of Order: 10th day of January, 2020.

ORDER

Per: Ms. Sucharitha R. Member (J)

1. This application has been filed by State Bank of India under Section 60 (5) of IBC, 2016 and read with Rule 11 of the NCLT Rules, 2016. In this application, the petitioner prays for

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review/recall of the Order dated 25.06.2019 passed by this Adjudicating Authority in IA No. 21/CTB/2019.

2. Applicant submits that Corporate Insolvency Resolution Process was initiated by State Bank of India in CP (IB) No. 24/KB/2018 before NCLT, Kolkata Bench. By Order dated 21.12.2017 NCLT, Kolkata Bench admitted the Company Petition and Corporate Insolvency Resolution Process commenced. IA No. 21/CTB/2019 was filed by the respondent/Opposite Party/Corporate Debtor on the ground that the Reserve Bank of India had issued instruction without concurrence of the Government of India. Hence, the Order in CP (IB) No. 24/KB/2018 was reversed. The present application is filed for review/recall of this Order passed dated 25.06.2019 by this Adjudicating Authority in IA (IB) No. 21/CTB/2019. The applicant submits that Supreme Court in Civil Appeal No. 3169 of 2019 has permitted the applicant to file an application for review of the order. Hence, this Adjudicating Authority is bound by Order of Apex Court. Therefore, present CA (IB) No. 87/CTB/2019 is filed for review/recall of the Order dated 25.06.2019.

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3. The respondent has filed its reply, the respondent states that W.P. (C) No. 2511 of 2018 was filed by respondent against applicant was before the Hon'ble High Court of Orissa, by Order dated 15.03.2018 was pleased to grant an Order of stay of the proceeding initiated by State Bank of India in CP (IB) No. 24/KB/2018. The Order of the Hon'ble Apex Court in IA 96019/2019 arising out of Civil Appeal No. 3169/2019 cannot be interpreted as "direction/permission to review". The respondent filed Writ Appeal No. 237 of 2018, challenging the Order dated 02.05.2018 passed by the Single Judge of the Hon'ble High Court of Orissa. The Order dated 27.06.2018 in WA No. 237/2018 was challenged in Civil Appeal No. 3169 of 2019 before the Hon'ble Supreme Court. Meanwhile, the main writ petition was dismissed by the Hon'ble High Court of Orissa by Order dated 23.03.2019. In Civil Appeal No. 3169 of 2019, the reliefs prayed for were, inter alia, as follows: -

"Main Prayer: -

*(a) Grant Special Leave to Appeal against
the impugned Interim Order dated 27th
June, 2018 passed by the Hon'ble*

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*High Court of Orissa at Cuttack in
Writ Appeal No. 237 of 2018;*

*(b) Pass such other order or orders as this
Hon'ble Court may deem fit and
proper in the facts and circumstances
of the case.*

Interim Prayer: -

*(a) Direct the Ld. National Company Law
Tribunal to proceed with the
Corporate Insolvency Resolution
Process filed by the petitioner bank
under Section 7 of the Insolvency and
Bankruptcy Code, 2016 (IBC) before
the NCLT, Kolkata Bench vide CP (IB)
No. 24/KB/2018;*

*(b) Direct stay of operation of the Interim
Order dated 27.06.2018 passed by the
Hon'ble High Court of Orissa at
Cuttack in Writ Appeal No. 237 of
2018;*

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(c) Pass such other or further order (s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."

4. By the Order dated 29th July, 2019, the Hon'ble Supreme Court of India in Civil Appeal No. 3169 of 2019, State Bank of India Vs. Visa Steel Limited and Anr. which is as under: -

"Mr. Tushar Mehta, learned Solicitor General submits that his instructing counsel may be permitted to withdraw the instant appeal with liberty to approach the National Company Law Tribunal (NCLT) for review of the Order under challenge.

Permission is granted.

The appeal is accordingly dismissed as withdrawn with liberty as aforementioned."

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5. The applicant has sought permission before the Hon'ble Supreme Court to withdraw the Civil Appeal. While doing so, the applicant has also sought permission to file "review" before the National Company Law Tribunal against the Order dated 25.06.2019 passed by this Adjudicating Authority in IA (IB) No. 21/CTB/2019. The Hon'ble Supreme Court has only permitted the applicant to withdraw the Civil Appeal with liberty as aforementioned. So, this is a permission granted by the Hon'ble Supreme Court to exhaust/explore the rights of the banker/applicant under the provision of law in force. The question before us is Can this be interpreted as a direction by the Hon'ble Supreme Court directing this Adjudicating Authority to review its own Order dated 25.06.2019 in IA (IB) No. 21/CTB/2019. With due respect to the Hon'ble Supreme Court, the plain reading of the Order is a permission sought by the applicant and the grant of the same by the Hon'ble Supreme Court. There is no direction or observation made by the Hon'ble Supreme Court in respect of the IA (IB) No. 21/CTB/2019. There is no specific direction or a permission to file a review petition. Furthermore, there is no provision for review under the Insolvency and Bankruptcy Code, 2016.

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6. Definitions of Article 142 of Indian Constitution are as follows –

“142. (1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe.

(2) Subject to the provisions of any law made in this behalf by Parliament, the Supreme Court shall, as respects the whole of the territory of India, have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of

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any documents, or the investigation or punishment of any contempt of itself.”

7. Can the Order dated 29th July, 2019 passed in the Civil Appeal No. 3169 of 2019 can be interpreted as an Order of the Hon’ble Supreme Court under Article 142 of the Indian Constitution? The answer is NO. The permission to “withdraw with liberty” granted by Hon’ble Apex Court cannot be interpreted as an Order under Article 142 of the Constitution of India.

8. The application has been filed by the applicant under Section 60 (5) read with Rule 11 of National Company Law Tribunal Rules, 2016. Definitions of Section 60 (5) of the IBC, 2016 are as follows –

“Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal Shall have jurisdiction to entertain or dispose of–

(a) Any application or proceeding by or against the Corporate Debtor or Corporate Person;

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(b) Any claim made by or against the Corporate Debtor or Corporate Person, including claims by or against any of its subsidiaries situated in India; and

(c) Any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the Corporate Debtor or corporate person under this Code.”

Definitions of Rule 11 of National Company Law Tribunal Rules, 2016 are as follows –

“Inherent Powers: - *Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal.”*

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9. In the above provision, there is no specific power to review its own order.
10. The IA (IB) No. 21/CTB/2019, this Adjudicating Authority passed an Order dated 25th June, 2019. The applicant herein has not filed any appeal before Hon'ble NCLAT against this Order. However, the applicant had filed an interim application bearing IA (IB) No. 96019/2019 in Civil Appeal No. 3169 of 2019. Since, the applicant withdrew the main Civil Appeal, this interim application is also closed. The present CA No. 87/CTB/2019 was filed on 20th August, 2018. The question was put to the applicant, as to why they have not filed appeal before the Hon'ble NCLAT, if there were aggrieved by the Order of this Adjudicating Authority dated 25th June, 2019. There is no clear-cut answer from the counsel appearing for the State Bank of India/applicant. However, learned Counsel stated that the bank did not get appropriate guidance/opinions from their counsel. It is very unfortunate to hear such comments from the nationalised bankers and that to in the matters of such high stakes.
11. The Hon'ble Supreme Court and Hon'ble NCLAT has time and again clearly held and also under the provisions of IBC, 2016

that there is no provisions under the IBC, 2016 nor under the NCLT Rules to review its own order. Hence, the Order of the Hon'ble Supreme Court dated 29th July, 2019 cannot be interpreted as a direction given to this Adjudicating Authority to review the Order. With due respect to the Hon'ble Supreme Court while permitting the applicant to withdraw its application has only granted liberty to explore and exhaust the remedies available under the statute.

12. Since, there is no provisions under the Act, Rules of Insolvency and Bankruptcy Code, 2016, nor any judgments precedents, this application for review/recall is not maintainable.

13. In view of the above, this application stands **DISMISSED**.



Shri Satya Ranjan Prasad
Member (T)



Ms. Sucharitha R.
Member(J)

Signed on this, the 10th day of January, 2020

Santosh_P.S.