IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH- II, CHENNAI

IA/(IBC)2070(CHE)/2023

In

IBA/796/(CHE)/2020

(filed under Section 60(5) of the Insolvency & Bankruptcy Code, 2016)

In the matter of ***You Seung Sang Sa India Construction Private Limited***

MR. HARSH GARG
Resolution professional of
M/s. You Seung Sang Sa India Construction Private Limited
…Applicant/Resolution Professional

In the matter of

Ms. Monika Gupta, Sole Proprietor M/s. Monika Traders
… Financial Creditor

-Versus-

M/s. You Seung Sang Sa India Construction Private Limited
… Corporate Debtor

Order Pronounced on **23rd February, 2024**

CORAM

SHRI JYOTI KUMAR TRIPATHI, MEMBER (JUDICIAL)
SHRI RAVICHANDRAN RAMASAMY, MEMBER (TECHNICAL)

Appearances:

For Applicant : Mr. Varinder Chhibbar, Advocate
Resolution professional : Mr. Harsh Garg.

ORDER

1. This is an Application filed for consideration under Section 60(5) of the Insolvency & Bankruptcy Code, 2016 read with Rule 11 of National Company Law Tribunal Rules, 2016 moved by Mr. Harsh Garg, Resolution Professional of M/s.

You Seung Sang Sa India Construction Private Limited, seeking reliefs as follows,

> *that the present application may kindly be allowed and the order dated 26.10.2022 passed by this Hon'ble Tribunal may kindly be recalled/amended vide which the same has been marked to the Insolvency & Bankruptcy Board of India for taking appropriate action against the Resolution Professional, without appreciating the facts and circumstances of the case.*

2. The Learned Counsel for the Applicant submitted that M/s. You Seung Sang Sa India Construction Private Limited, was admitted into Corporate Insolvency Resolution Process based on an application moved by Monika Gupta, Proprietor of M/s. Monika Traders. The Applicant herein was appointed as the Interim Resolution Professional of the Corporate Debtor and thereafter, was confirmed as the Resolution Professional during the 1st CoC Meeting held on 03.09.2021.

3. The Learned Counsel for the Applicant submitted that the suspended directors of the Corporate Debtor are Korean Nationals who left the country prior to the initiation of CIRP of the corporate debtor and they have left all the addresses in India and as such there was non-cooperation from suspended directors. It is submitted that as per the last Balance Sheet filed by the corporate debtor ending with 31.03.2019, there were substantial moveable assets owned by the corporate debtor in the form of vehicles and trade

receivables but the statutory auditor has failed to provide necessary information regarding the assets of the corporate debtor.

4. The Learned Counsel for the Applicant submitted that the applicant has filed this application under Section 19(2) of the code in IA/(IBC)/993(CHE)/2021 seeking appropriate directions against the suspended directors of the corporate debtor i.e. Mr. Her Seung Hwi and Mr. Hur Yoo Hae and statutory auditor of the corporate debtor.

5. The Learned Counsel for the Applicant submitted that no Expression of Interest was received after issuance of Form G on 29.09.2021. It is submitted that during the 4th CoC Meeting, owing to non-cooperation of the suspended directors of the Corporate Debtor the applicant had proposed to liquidate the Corporate Debtor. However the CoC had rejected the said proposal and directed the applicant to pursue the application filed u/s 19(2) of the code.

6. The Learned Counsel for the Applicant submitted that the suspended directors failed to appear in IA/(IBC)/993(CHE)/2021 filed u/s 19(2) of the code despite publication in Korean newspaper. It is further submitted that in the meantime the 180 days of CIRP period ends on 05.02.2022.

7. The Learned Counsel for the Applicant submitted that an application in IA (IBC)/160/CHE/2022 was filed on 28.01.2022 seeking exclusion of the pendency period of IA/(IBC)/993(CHE)/2021 with effect from 10.09.2021 till the disposal of same.

8. The Learned Counsel for the Applicant submitted that the statutory auditor appeared and filed his reply on 07.03.2022 in IA/(IBC)/993(CHE)/2021.

9. The Learned Counsel for the Applicant submitted that, when the matter in IA(IBC)/160/CHE/2022 for exclusion, was taken up for hearing on 26.10.2022 by this Adjudicating Authority, the same was disposed of rejecting the prayer of the applicant seeking exclusion of the period of pendency of IA/(IBC)/993(CHE)/2021 with effect from 10.09.2021 till the disposal of the IA (IBC)/160/ CHF/ 2022 and a copy of the same was marked to the Insolvency & Bankruptcy Board of India for necessary actions against the Applicant without appreciating the facts and circumstances of the case.

10. The Learned Counsel for the Applicant submitted that, the 7th CoC Meeting was convened on 02.11.2022 to discuss the aforesaid development with the members of the CoC and majority of the members of the CoC are against the idea of putting the corporate debtor in to liquidation and was of the view that the appeal should be filed against the impugned order.

11. The Learned Counsel for the Applicant submitted that, the applicant filed an appeal in Comp App (AT) (CH) (Ins) No. 432/2022 before the Hon'ble NCLAT, Chennai against the order dated 26.10.2022 passed by this Adjudicating Authority. It is submitted that the said appeal was dismissed as withdrawn vide order dated 23.12.2022. However, the Hon'ble NCLAT, Chennai also allowed the applicant to approach this Adjudicating Authority by filing necessary application seeking redressal of his grievance pertaining to observations made by this Adjudicating Authority and also against marking a copy of the order dated 26.10.2022 to the IBBI for taking appropriate action against the applicant.

12. The Learned Counsel for the Applicant submitted that, having aggrieved by the order dated 23.12.2022 passed by this Adjudicating Authority, the instant applicant is filed seeking review/ amendment of the above referred order dated 26.10.2022.

13. Heard the Learned Counsel for the Applicant and perused the documents on record.

14. It is seen that, the applicant was appointed as the IRP for the Corporate Insolvency Resolution Process of the Corporate Debtor viz., M/s. You Seung Sang Sa India Construction Private Limited as proposed by the Operational Creditor vide order dated 09.08.2021 by this Adjudicating Authority

and thereafter confirmed as the RP by the CoC . It is averred that the applicant/RP has performed his duties as RP since his appointment. From the submissions of the RP it is seen that the Applicant/RP has preferred an application in IA(IBC)/160(CHE)/2022 seeking relief as follows,

> *"It is therefore, respectfully prayed that the present application may kindly be allowed and the period with effect from 10.09.2021 till the disposal of the present application may kindly be excluded from the Corporate Insolvency Resolution Process period of the Corporate Debtor i.e., M/s. You Seung Sang Sa India Construction Private Limited, which is going to expire on 05.02.2022."*

15. After several of adjournments in the case due to the then existed pandemic, when the matter was taken up for hearing on 26.10.2022, this bench on perusal of the application and the above referred prayer has disposed of the matter for the reasons that the relief sought was not clear as to how many days needs to be excluded. It was observed that since the 330 days of the Corporate Insolvency Resolution Process period has come to an end on 05.02.2022, which is almost eight months prior to 26.10.2022. Thus, it was remarked against the attitude of the RP and the CoC as well considering the provisions of the code. Accordingly, a copy of that order was marked to Insolvency & Bankruptcy Board of India.

16. Be that as it may, the applicant/RP, preferred an appeal in Comp. Appeal (AT) (CH) (Ins) Nos. 432/2022 & IA Nos. 1095 & 1096/2022. The same was dismissed as withdrawn vide

order dated 23.12.2022. Making it clear that the said order *does not preclude the 'Appellant' therein to approach the Adjudicating Authority and if such an application is filed the Adjudicating Authority is directed to deal with it in on 'merits', in a fair, just and in dispassionate manner and of course, uninfluenced and untrammelled with any of the observations, made by this 'Tribunal', in this Appeal.*

17. Thus the Applicant herein has approached this Adjudicating Authority vide the instant application seeking recall/ amendment of the order dated 26.10.2022. At this Juncture, it is relevant to refer the matter of ***Union Bank of India vs. Dinakar T. Vekatasubramanian & Ors***, a five member Full Bench of Hon'ble NCLAT, wherein it was held that *though the power to review is not conferred upon the Tribunal but power to recall its judgment is inherent in the Tribunal and is preserved by Rule 11 of the NCLT Rules, 2016. It was held that power to recall a judgment can be exercised when any procedural error is committed in delivering the earlier judgment; for example, necessary party has not been served or necessary party was not before the Tribunal when judgment was delivered adverse to a party. It was observed that there may be other grounds to recall a judgment one of them being where fraud is played on the Court in obtaining a judgment.* This decision of Hon'ble NCLAT was upheld by a two-Judge Bench of the Hon'ble Supreme Court vide order dated 31.07.2023 in Civil

Appeal No.4620 of 2023 (***Union Bank of India vs. Financial Creditors of M/s Amtek Auto Ltd. & Ors.)***.

18. Taking into consideration, the decision ***Supra*** along with the order dated 26.10.2022, we are of the considered view that, the order dated 26.10.2022 seems to have no grounds for recall. This Adjudicating Authority is well aware about the incidental/ancillary powers vested with it. However, the same cannot be exercised unless and until there exists a valid ground. In the instant matter the applicant has aggrieved for the reasons that the said order remarking his attitude was marked to Insolvency & Bankruptcy Board of India, and thereby wants to either recall or amend the said order. Considering the fact that, Resolution Professionals are professionals governed by Insolvency & Bankruptcy Board of India and for which IBBI has framed the Insolvency & Bankruptcy Board of India (Resolution professionals) Regulations, 2016. Regulation 13 & 14 of IBBI (Resolution Professionals) Regulations, 2016 mentions about the timeliness of a Resolution professional making it clear that the RP performing his duties must adhere to the time limits of the code.

> *Timeliness.*
> *13. An insolvency professional must adhere to the time limits prescribed in the Code and the rules, regulations and guidelines thereunder for insolvency resolution, liquidation or bankruptcy process, as the case may be, and must carefully*

plan his actions, and promptly communicate with all stakeholders involved for the timely discharge of his duties.
14. An insolvency professional must not act with mala fide or be negligent while performing his functions and duties under the Code.

19. The conduct of the RP/Applicant in IA(IBC)/160(CHE)/2022 was remarked and marked to IBBI to ensure that the timeline prescribed by the code must be strictly adhered by the professionals engaged on a serious note, non-compliance to which would ultimately defeat the very object of the code.

20. The application is devoid of merits and therefore, we deem it fit to dismiss the instant application as no grounds for recalling the said order is made out by the applicant, accordingly **dismissed**.

-Sd-
RAVICHANDRAN RAMASAMY
MEMBER (TECHNICAL)

-Sd-
JYOTI KUMAR TRIPATHI
MEMBER (JUDICIAL)

Mohanapriya