

National Company Law Appellate Tribunal

Principal Bench, New Delhi

COMPANY APPEAL (AT) (INSOLVENCY) No. 640 of 2021

(Arising out of Order dated 23rd March, 2021 passed by National Company Law Tribunal, New Delhi Bench, Court-V, in IB- 2116/ND/2019).

IN THE MATTER OF:

**MRA Associates (India) Private Limited
102, Parkview Apartment, New Manglapuri,
New Delhi – 110030.**

...Appellant

Versus

**Red Fort Capital Advisors Private Limited
C-50, Third Floor, Gulmohar Park,
New Delhi – 110016.**

...Respondent

**Appellant: Mr. Vishal Ganda, Mr. Ayandeb, Ms. Sonam Gupta,
Ms. Akanksha Mathur, Advocates.**

Respondent: None.

J U D G E M E N T

[Per; Shreesha Merla, Member (T)]

1. By filing this Appeal, the Appellant has sought for setting aside the Impugned Order dismissing the prayer for revival/restoration of Company Petition No. IB/2116/ND/2019 filed before the Learned Adjudicating Authority (National Company Law Tribunal, New Delhi, Court-V).

2. Heard the Learned Counsel for Appellant and pursued the averments made in the Appeal. Learned Counsel for the Appellant submitted that the matter was heard and the Order was passed by the Adjudicating Authority on 30.09.2019. He further submitted that when the Order was reserved, the Appellant had filed some additional documents but those documents had

not been considered while passing the Order dated 30.09.2019 and the Application was erroneously dismissed on the ground of limitation.

3. We observe from the record that the Adjudicating Authority had reserved the Order on 20.09.2019 in Company Petition No. IB/2116/ND/2019 and three days *after* the reserving of the Order, the Appellant preferred CA No. 103/CB/ND/2019, on 23.09.2019, seeking a direction to file additional documents. It is significant to mention that the Order was pronounced on 30.09.2019. Further, despite CA No. 103/CB/ND/2019 having been listed by the Adjudicating Authority on 21.11.2019, 29.11.2019 and on 08.01.2020, none appeared on all the three days and subsequently the Application was dismissed for default. Thereafter the Appellant preferred a Review Application No. 09 of 2021 in IB/2116/ND/2019 (which was disposed of on 30.09.2019), on 20.02.2021. It is an admitted fact that the Appellant did not choose to challenge the main Order of dismissal but has only filed this Review Application No. 09 of 2021. The Learned Adjudicating Authority while dismissing the Review Application observed as follows:-

“Admittedly, there is no provision for review of the order under IBC and this has also not been denied by the Ld. Counsel for the petitioner and that is a reason he placed reliance upon the Rule 11 of the National Company Law Tribunal Rules, 2016. The power of Appeal, Revision and the Review are the creation of legislature that is the statutory powers that cannot be exercised by the Court/Tribunal unless and until it is provided under the Act/Code. It is the settled principle of law if the power of Appeal, Revision and Review are not provided under the statute then under such circumstances, neither the appeal nor the revision nor review will lie.

*So, we are unable to accept the contention of the applicant that by exercising its power under Rule 11 of the NCLT Rules, 2016, this Adjudicating Authority is empowered to review the order. Hence, we have no option but to reject the prayer of the applicant, the prayer of applicant is hereby **rejected**. Accordingly, the **application is dismissed**.”*

4. The Hon'ble Supreme Court in a catena of Judgements has observed that the 'Power of Review' must be conferred by law either specifically or by necessary implication.

5. Sub-Section 2 of Section 420 of the new Act reads as under:-

“The Tribunal may, at any time within two years from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it, and shall make such amendment, if the mistake is brought to its notice by the parties: Provided that no such amendment shall be made in respect of any order against which an appeal has been preferred under this Act.”

6. Rule 9 of NCLT Rules reads as hereunder:-

“(2) The Tribunal may, at any time within two years from the date of the order with a view to rectifying any mistake apparent from the record, amend any order passed by it, and shall make such amendment, if the mistake is brought to its notice by the parties;”

7. We are of the considered view that sub-Section 2 of Section 420 only discusses if there is any mistake apparent from the record and Rule 11 of the NCLT Rules, 2016, which the Learned Counsel seeks to place reliance upon, cannot be applied to the facts and circumstances of this matter, keeping in view the aforementioned observations. Hence, we are in agreement with the Learned Adjudicating Authority that 'Power of Review' is not an inherent power and is required to be conferred either specifically or necessary by implication. We find no grounds to interfere with the well-

reasoned Order of the Learned Adjudicating Authority and hence this Appeal fails and is accordingly dismissed.

[Justice Jarat Kumar Jain]
Member (Judicial)

[Ms. Shreesha Merla]
Member (Technical)

NEW DELHI
25th October, 2021

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