

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH (Court-II)  
KOLKATA**

I.A. (I.B.C.) 926/KB/2022

In

CP(IB) No. 1042/KB/2018

*In the matter of:*

**United Bank of India, (Now Punjab National Bank)**

*....Financial Creditor*

*Versus*

**Mansi Oils & Grains Private Limited**

*.....Corporate Debtor*

**I.A.(I.B.C) 926/KB/2022**

*An Application under section 7 of the Insolvency and Bankruptcy Code, 2016  
read with rule 4 of the Insolvency and Bankruptcy (Application to  
Adjudicating Authority) Rules, 2016*

*In the matter of:*

- 1. Rajendra 'Raju Mansinghka**
- 2. Cosy India Limited**
- 3. Mansinghka Exim Private Limited**

*....Applicants*

*Versus*

**Punjab National Bank (formerly United Bank of India)**

*....Respondent*

**Date of Hearing: 02.02.2023**

**Date of pronouncing the order: 04.09.2023**

**Coram:**

**Smt. Bidisha Banerjee**

**: Member (Judicial)**

**Shri Balraj Joshi**

**: Member (Technical)**

**Appearances (via video conferencing/ physical):**

**For Punjab National Bank**

Ms. Urmila Chakraborty, Adv.  
Mr. Debarish Chakraborty, Adv.  
Mr. S. Chakraborty, Adv.  
Mr. R. Mansinghka, in person

**ORDER**

***Balraj Joshi, Member (Technical)***

1. This Court convened through hybrid mode.
2. This interlocutory application being I.A. No. 926/KB/2022 has been filed by the Applicants herein being the guarantors of Mansi Oils & Grains Private Limited, the Corporate Debtor, under section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC) seeking the following reliefs:
  - a. *An Order rejecting BANK Petition vide number C.P. (IB) No. 1101/KB of 2019 filed under Section 7 of The Insolvency & Bankruptcy Code, Ay 2016 by the applicant/financial creditor holding the same to be time barred under Article 137 of The Limitation Act, 1963, beside "NPA as being illegal / void - retrospective cum presumptive"*
  - b. *An Order rejecting Company Petition vide number C.P. (IB) No. 1101/KB of 2019 or other cases filed under Section 7 of The Insolvency & Bankruptcy Code, 2016 by the applicant/financial creditor holding the corporate guarantee to be unenforceable against the respondent/corporate debtor as the guarantee was invoked against the respondent/corporate debtor in contrary to the provision of Section 185 of The Companies Act, 2013; when n.p.a. is illegal, void, retrospective and purely on presumptions.*
  - c. *Costs of and incidental to this instant application be paid to the respondent/corporate debtor by the applicant/financial creditor;*

- d. *Declaring liquidators' connivance for delivery of building-shed as part of P & M 's accessories in connivance of Bank officials named in Different C.O.C. meetings in 2019 & 2020, as being illegal & void with liberty to borrowers for legal recourse for " entire illegality & litigation by bank for wrong - void - presumptive / retrospective NPA.*
- e. *Such further and/or other order or orders be made and/or directions be given as would afford complete relief to your respondent/corporate debtor/ guarantors and collateral providers.*

3. **Submissions of the Applicant:**

- 3.1 The case of the Applicants herein is that Mansi Oils & Grains Private Limited, the Corporate Debtor had availed certain loan facility from United Bank of India and NABARD. In connection with this loan facility, Applicant No. 2 being Cosy India Limited had extended a guarantee. Cosy (India) Limited is one of the companies also in control of Applicant No.1 being Rajendra Raju' Mansinghka.
- 3.2 Thereafter, United Bank of India had initiated legal proceedings against Mansi Oils & Grains Private Limited, the Corporate Debtor herein (C.P.(IB)/1042(KB)/2018) and Cosy India Limited (the Corporate Guarantor) (C.P.(IB)/1101 (KB)/2019) under the provisions of the Code. On one hand, the proceedings for initiation of CIRP (and subsequently liquidation) against the Corporate Debtor had been allowed, while on the other hand, the legal proceedings for initiation of CIRP against Cosy India Limited was disallowed on account of limitation.
- 3.3 By an order dated 29 April 2022, this Adjudicating Authority had been pleased to dismiss C.P.(IB)/1101 (KB)/2019 filed against Cosy India solely on the ground of limitation. While passing the said order, this Adjudicating Authority was pleased to record the objections raised on behalf of Cosy India, however, did not adjudicate upon the same. As such, the Applicants are seeking necessary clarification/modification to

the order dated 29 April 2022 passed by this Adjudicating Authority in C.P.(IB)/1101 (KB)/2019 in view of the following reasons:

- i. The Date of Default identified by the Financial Creditor is retrospective, presumptive and contrary to the provisions of law Admittedly, on 30.9.2008 the account of the Corporate Debtor (of which Cosy India was a guarantor) has been declared NPA with effect from 31.12.2005. More so, as on 30.9.2008, the due date for repayment of 1<sup>st</sup> instalment had not even arrived at (*i.e.*, due date 31/01/2009). This is an admitted position, also recorded in the said order under the analysis and findings.
- ii. The Deed of Guarantee dated 9.11.2004 and another Deed of Guarantee dated 21.6.2007 issued by Cosy India Limited in favour of the Financial Creditor is contrary to the provisions of section 185 of the Companies Act, 2013-Since the Corporate Debtor and the guarantor (Cosy India Limited) are related entities, accordingly, Cosy India Limited is prohibited from extending guarantee for the Corporate Debtor.
- iii. After the commencement of liquidation, the liquidator namely, Rachna Jhunjhunwala, initiated the process of sale of assets of the Corporate Debtor based on stand-alone block(s) of assets. The Applicant herein is aggrieved by the process in which the assets have been grouped together (ie, Block 2 - Plant & Machinery and Equipments) in the E-auction Process Information Document dated 3.1.20. A part of the refining unit which comprises of a part of building and shed (also confirmed by the independent valuation reports and the financial statements of the Corporate Debtor) has been sold with plant & machinery. The e-auction of the said plant & machinery has been completed on 18.1.20. The Liquidator has acted contrary

to the principle of 'maximization of value of assets' and against the interest of the stakeholders. Further the Financial Creditor falsified the valuation of the assets of the Corporate Debtor and conducted the same in a concocted manner.

- iv. From face of it, the E-AUCTION memorandum in itself shows manipulations done by Liquidator with *mens rea*, i.e. it omitted 21,600 sq. ft shed from list of Property's Ab-Initio, thus its clarification on 16-1-2020 seems meaningless & infructuous (.). This refinery shed in company's books i.e. list of assets and/or within insurance and/or in Banks book appear as building shed stand valued by banks in 2010 twice.

4. **Analysis and Findings:**

4.1 Heard the Ld. Counsel for the Applicant and the Ld. Counsel on behalf of the Liquidator of the Corporate Debtor and perused the record.

4.2 On perusal of records before us, the following timeline comes into picture:

Date	Particulars
01.01.2019	In C.P.(IB)/1042 (KB)/2018, CIRP was commenced in respect of Mansi Oils & Grains Pvt. Ltd., the Corporate Debtor herein.
19.07.2019	Liquidation commenced in respect of Mansi Oils & Grains Private Limited, the Corporate Debtor.
29.04.2022	C.P.(IB)/1101 (KB)/2019, a petition under section & of the Code against the guarantor (Cosy India Ltd.) which

	is the Applicant no. 2 herein, was rejected on the ground of limitation.
08.08.2022	The instant application was filed.
13.09.2022	The Corporate Debtor herein was dissolved.

4.3 It is clear to us that the reliefs sought under this application do not pertain to C.P.(IB)/1042 (KB)/2018 or the Corporate Debtor herein. Instead, the modification sought, is in respect of order dated 29 April 2022 passed in C.P.(IB)/1101 (KB)/2019, *i.e* a different company petition. Both the matters are separate and need to be dealt with separately. The remedy sought cannot be granted by this Adjudicating Authority under the aegis of the instant company petition.

4.4 It is further noted that the applicants are infact seeking review of the order dated 29.04.2022 in the garb of modification whereas this Adjudicating Authority does not have the power to modify its own order under the provisions of the Code. In this regard, we would like to refer to the decision of the Hon'ble National Company Law Appellate Tribunal (NCLAT) in the matter of ***Santosh Wasantrao Walokar and Ors. Vs. Respondent: Vijay Kumar V. Iyer and Ors.***<sup>1</sup> wherein the Appellate Authority held that the NCLT does not have power to modify its own order but can only correct patent, manifest and self-evident error apparent from the record that does not require elaborate discussion of evidence or argument to establish it.

4.5 Further, it is to be noted that the Hon'ble Supreme Court has recently upheld<sup>2</sup> the decision taken by the Hon'ble NCLAT in the matter of ***Union Bank of India (Erstwhile Corporation Bank) vs. Dinkar T.***

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<sup>1</sup> MANU/NL/0039/2020

<sup>2</sup> Civil Appeal No. 4620/2023, decided on July 31, 2023

**Venkatasubramanian & Ors**<sup>3</sup>. The relevant extract from the said judgment has been reproduced hereinunder:

*27. In view of the foregoing discussion, we answer the questions referred to this Bench in following manner:*

*I: This Tribunal is not vested with any power to review the judgment, however, in exercise of its inherent jurisdiction this Tribunal can entertain an application for recall of judgment on sufficient grounds.*

Thus, this Adjudicating Authority is empowered only to recall its judgment on sufficient grounds and not review it on merits.

4.6 The applicants have infact taken out this application with an intention to achieve indirectly what they cannot achieve directly. We rely on the judgment of Hon'ble high court at Calcutta in M/s. Odisha Slurry Pipeline Infrastructure Ltd. & Anr. Vs. Rakesh Sharma & Ors.in CPAN 922 of 2022 CAN 10 of 2023 CAN 11 of 2023, CAN 12 of 2023, CAN 13 of 2023 decided on 25.07.2023 wherein the following has has been held:

*“There is a clear distinction between recall of an order/judgment and a review of the order/judgment. The review has to be entertained on a well-defined parameter enshrined under Order XLVII Rule 1 of the Code of Civil Procedure. On the other hand, the recall to a contested order has to be decided in a limited sphere and should not be permitted to expand the horizon of the consideration or the points which have been dealt with in a judgment and order passed in pursuit of dispensation of justice and adjudication of rights of the parties. Neither the review jurisdiction nor an application for recall should be permitted for re-visitation, re-writing and/or re-appreciation of the facts as its*

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<sup>3</sup> I.A. No. 3961 of 2022 in Company Appeal (AT) (Ins.) No. 729 of 2020

*applicability is within the limited contour envisaged under the law.”*

The Hon’ble High Court of Calcutta in the above judgment further observed:

*“It would not be incorrect, in our opinion, what we gather from the stand of the applicants that the instant application has been taken out to achieve a thing indirectly, which cannot be achieved directly. What is intended by filing the instant application is the re visitation of the judgment rendered in the contempt application and any findings incidentally or accidentally made in the instant judgment to take advantage thereof, which, in our opinion, should be deprecated.”*

4.7 Considering the aforementioned judgments and the facts and circumstances of the case, this Adjudicating Authority is of the considered opinion that the instant application should be **dismissed** as not maintainable.

4.8 Accordingly, **I.A. (I.B.C.) 926/KB/2022** stands **dismissed**.

4.9 The registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.

4.10 A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

**Balraj Joshi**  
**Member (Technical)**

**Bidisha Banerjee**  
**Member (Judicial)**

**Signed on this, the 4<sup>th</sup> day of September, 2023**

SM[LRA]