



IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI

Rst. A(IBC)/4/CHE/2023 in CP(IB)/211(CHE)/2022

In the matter of Sargam Metals Private Limited

Neeraj Agarwal

Proprietor M/s. Ambal Agencies,
Residing at T-401, The Metrozone,
44 Pilliyar Koil Street,
Jawaharlal Nehru Road,
Anna Nagar, Chennai – 600 040

... Applicant / Operational Creditor

-Versus-

Sargam Metals Private Limited

Having Registered Office at
Plot No.7A, Sipcot Industrial Park,
Chellaperambulimedu Village,
Cheyyar, Thiruvannamalai – 631 701

... Respondent / Corporate Debtor

Order pronounced on 12th October 2023

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)

VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

For Applicant : *Cibi Vishnu, Advocate*

For Respondent : *Akash Srinanda, Advocate*



ORDER

Per: VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

Rst. A.(IBC)/4(CHE)/2023 is a Restoration application filed by the Applicant / Financial Creditor seeking reliefs as follows;

a. *In view of the aforestated facts, it is most humbly prayed that this Hon'ble Tribunal may be pleased to order the restoration of CP.(IB) No. 211(CHE)/2022 filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 and pass such further or other orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case and thus render justice.*

b. *For such further and / or other relief on such terms and conditions as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.*

2. The Applicant Operational Creditor had filed CP(IB)/211/CHE/2022 under Section 9 of IBC, 2016 against the Corporate Debtor viz. Sargam Metals Private Limited. This Tribunal vide its order dated 10.01.2023 dismissed the said application, which is as follows;

Both the parties are present through video conferencing mode.

"Vide order dated 28.11.2022 Ld. Counsel for the Petitioner was directed to serve the copy of this Application to the Respondent within two days from today".

The directions of this Tribunal have not been complied with till today. The Respondent Counsel states that he received the Application without annexures.



Further, "Ld. Counsel for the Respondent states the Applicant Counsel stated that if he wishes to obtain the full copy of the Application he may obtain the same from the NCLT".

It appears that the directions of the Court were dis-obeyed by the Applicant.

*In view of the above, CP(IB)/211/CHE/2022 stands **dismissed**.*

3. Aggrieved by the said order, the Operational Creditor filed the present Application i.e. Rst.A(IBC)/4/CHE/2023 on 31.01.2023.

4. It is submitted by the Learned Counsel for the Applicant / Operational Creditor that the matter had come up for hearing on 28.11.2022, and this Tribunal had directed the Counsel for Applicant to serve a copy of the Application to the Counsel for Corporate Debtor within two days from the date of hearing. However, due to some errors by the clerk of the erstwhile counsel, the papers were not served properly on the Counsel for Corporate Debtor in compliance with the order of the this Adjudicating Authority dated 28.11.2022.

5. It is submitted that only after the order dated 10.01.2023, was uploaded on the NCLT website, the Applicant realized that the matter has been dismissed for non-compliance of order dated 28.11.2022. It is



submitted that non-serving of the papers was an inadvertent clerical error and was neither willful nor wanton and was a *bonafide* error.

6. It is submitted that the Applicant has a *prima facie* case and if the Petition is not restored it will result in grave prejudice and irreparable hardship to the Applicant herein.

7. The Respondent / Corporate Debtor filed the counter. It is submitted that Application was dismissed on the ground of disobedience of the directions given by this Tribunal. Rule 48(2) of NCLT Rules 2016 is applicable only to an Application dismissed for default and not for a case where the application is dismissed for disobedience. Under such circumstances, dismissal of this Application has been prayed.

8. Heard the submissions made by the Learned Counsel for the parties.

9. The Hon'ble NCLAT in the case of **Union Bank of India –Vs- Dinkar T. Venkatasubramanian & Ors.** in *IA No.3961 of 2022 in*



Company Appeal (AT)(Ins) No. 729 of 2020 has dealt in detail the difference between 'Review' and 'Recall' in para 20 as follows;

20. *The above judgments of the Hon'ble Supreme Court clearly lays down that there is a distinction between review and recall. The power to review is not conferred upon this Tribunal but power to recall its judgment is inherent in this Tribunal since inherent power of the Tribunal are preserved, powers which are inherent in the Tribunal as has been declared by Rule 11 of the NCLAT Rules, 2016. Power of recall is not power of the Tribunal to rehear the case to find out any apparent error in the judgment which is the scope of a review of a judgment. Power of recall of a judgment can be exercised by this Tribunal 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. There may be other grounds for recall of a judgment. Well known ground on which a judgment can always be recalled by a Court is ground of fraud played on the Court in obtaining judgment from the Court. We, for the purpose of answering the questions referred to us, need not further elaborate the circumstances where power of recall can be exercised.*

10. In the present case, no orders were passed on merits. The Application was dismissed only on the ground of disobedience of the order of this Tribunal dated 28.11.2022. We are of the view that under such circumstances, this Tribunal has the power to recall the order.



11. Further the reason stated by the Applicant / Operational Creditor appears to be reasonable and plausible. CP(IB)/211/CHE/2022 is accordingly restored back on file, subject to the payment of **Rs.25,000/-** (*Rupees Twenty Five Thousand Only*) by the Applicant to the **PM National Relief Fund** within a period of 2 weeks from today. The Petition to be listed for hearing on **14.11.2023**.

12. The Registry shall forward the copy of this order to both the parties. The Applicant / Financial Creditor shall also forward this order along with notice of next date of hearing of CP(IB)/211/CHE/2022, to the Respondent / Corporate Debtor and file proof of service in the Registry of this Tribunal before the next date of hearing.

13. Accordingly, **Rst.A(IBC)/4/CHE/2023** stands **allowed**. List **CP(IB)/211/CHE/2022** for hearing on **14.11.2023**

- Sd -

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

- Sd -

SANJIV JAIN
MEMBER (JUDICIAL)

Raymond