



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH (SPECIAL), COURT NO. II  
KOLKATA**

I.A. (IB) No. 1124/KB/2023

In

I.A. (IB) No. 471/KB/2022

In

CP (IB) No. 2078/KB/2019

*An Application under Rule 11 read with 154 of the NCLT Rules, 2016.*

**IN THE MATTER OF:**

**Trimurti Associates Private Limited**

... Financial Creditor.

Verses

**BKM Industries Limited**

... Corporate Debtor.

And

**IN THE MATTER OF:**

**ICICI Bank Limited**

... Applicant/ Financial Creditor.

Verses

1. Mr. Pratim Bayal, the RP of BKM Industries Limited
2. The Committee of Creditors of BKM Industries Limited

... Respondent.

**Date of Pronouncement: January 05, 2024.**

**CORAM:**

**ROHIT KAPOOR, MEMBER (JUDICIAL)**

**BALRAJ JOSHI, MEMBER (TECHNICAL)**

**APPEARANCE:**

**For applicant in IA/1124/2023:**

**Mr. Ratnanko Banerji, Sr. Adv.;**

**Ms. Pooja Chakrabarti, Adv.;**

**Mr. Aritra Deb, Adv.**

**For Resolution Professional:**

**Mr. Rishav Banerjee, Adv.;**

**Mr. Rajarshi Banerjee, Adv.**

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**ORDER**

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

1. This Court is congregated through hybrid mode.
2. This Application is filed under Rule 11 read with 154 of the NCLT Rules, 2016, by ICICI Bank Limited (Applicant) against the Resolution Professional (RP) and the Committee of Creditor of BKM Industries Limited seeking for the following reliefs such as:
  - a) *to modify the paragraphs 21 and 22 of the order dated March 01, 2023 to the extent as indicated in paragraph V (b) (vi) and V (b) (ix) respectively in the application;*
  - b) *any other orders as deemed fit and proper.*
3. The Learned Senior Counsel for the Applicant submits that the present application is being preferred for modification/rectification of an error in paragraph 21 and 22 of the **order dated March 01, 2023** passed by this Adjudicating Authority in **IA (IB)/471/KB/2022** in **CP (IB)/2078/KB/2019** in the matter of ICICI Bank Limited v. Pratim Bayal.
4. It is evident that vide an order dated 6th November, 2023, the Hon'ble NCLAT in **Company Appeal (AT) (Insolvency) No.405 of 2023** has upheld the order dated March 01, 2023, by saying that:

*“22. In view of the forgoing discussions, we are of the view that no error has been committed by the Adjudicating Authority in rejecting IA No.471 of 2022. There is no merit in the Appeal. The Appeal is dismissed. No order as to costs.”*
5. Thus, an order which has already been upheld by a higher forum cannot be altered or changed. To fortify our view, it would be appropriate to go through the provisions catered to under Section 420(2) of the Companies Act, 2013 as under:

**Orders of Tribunal. —**

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xxx

xxx



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*(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:*

*Provided that no such amendment shall be made in respect of any order against which an appeal has been preferred under this Act.*

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6. In terms of view above, the Application being **I.A. (IB) No. 1124/KB/2023** is not maintainable and accordingly **dismissed**.
7. Certified copies of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.

**Balraj Joshi**  
Member (Technical)

**Rohit Kapoor**  
Member (Judicial)

**This Order is signed on the 05<sup>th</sup> Day of January, 2024.**

Bose, R.K. [LRA]