

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI

(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No.430/2025
(IA Nos. 1230, 1231 & 1232/2025)

In the matter of:

M/s. Devi Engineering & Construction Private Limited

Having its registered office at

Plot No. 20, S.No. 139/1, IVY Grand,

Flat No. G-l, Ground Floor, Narasannanagar,

Suryaraopeta, Kakinada, Andhra Pradesh - 533003

Represented by its JV Gangadhar

**.... Appellant /
Corporate Debtor**

V

1. M/s. Global Enterprises

No. 15, Vasu Street,

Kilpauk, Chennai – 600010

2. M/s. Sai Agency,

No. 15, Vasu Street,

Kilpauk, Chennai - 600010, Tamil Nadu

3. M/s. S C. Shah Corporation,

No 57 Ormes Road, Kilpauk

Chennai - 600010, Tamil Nadu

**.... Respondents /
Financial Creditors**

Present :

For Appellant : Mr. Vikram P. Jain, Advocate

For Ms. Vindhya Vasini S, Advocate

For Respondents : Ms. Aparna Devi, Advocate

For Mr. Srenik S. Jain, Advocate for R1

ORDER
(Hybrid Mode)

03.09.2025:

Oral Judgment : Justice Sharad Kumar Sharma, Member (Judicial):

1. The Appellant i.e. M/s. Devi Engineering & Constructions Pvt. Ltd. is the Corporate Debtor (CD), in the proceedings of CP (IB) No. 1 / 7 / AMR / 2025. By virtue of an order, which has been passed on 13.06.2025, the right of the Appellant to file Counter was forfeited and the Company Petition was reserved for orders. The said order was sought to be recalled by the Appellant by filing IA (IBC) / 179 / 2025. However, the aforesaid Application for recall was rejected by an order dated 10.07.2025 on the ground that, in a parallel proceedings initiated by an Operational Creditor i.e. M/s. Sidhvi Infrastructure Projects Limited by way of CP (IB) No. 34 / 9 / AMR / 2021, CIRP process has already been directed to be commenced against the Corporate Debtor on 07.07.2025 and the IRP has also been appointed and therefore, the proceedings of CP (IB) No. 1 / 7 / AMR / 2025, has become infructuous and further, as the main Company Petition has become infructuous, IA (IBC) / 179 / 2025 preferred by the Appellant in the said Company Petition has also become infructuous and unsustainable. It is this order dated 10.07.2025 on the Application IA (IBC) / 179 / 2025 which the Appellant seeks to challenge.

2. The grievance of the Appellant is that, the closure of the proceedings of the Company Petition while deciding the Recall Application that, was preferred by the Appellant holding it to be infructuous is absolutely contrary to the records and that he was not heard by the Ld. Adjudicating Authority in the proceedings while passing orders on the said Recall Application.

3. This could be one of the best cases of an abuse of process of law, at the hands of the Appellant, who himself has derelicted in his duty to diligently participate in the proceedings before the Ld. NCLT and invited the order of 13.06.2025 and since then, has been seeking to recall the said order by filing a Recall Application that has been preferred by him for no valid and good reasons.

4. The order sheet of the proceedings of CP (IB) No. 1 / 7 / AMR / 2025, shows that in the proceedings held on 31.01.2025, it was recorded that the notices were issued to the Corporate Debtor i.e. the Appellant herein for ensuring their appearance on the next date fixed and accordingly the Ld. Tribunal directed the matter to be placed on 24.03.2025.

5. When the proceedings revived on 24.03.2025, the Corporate Debtor did put in appearance, through the proxy Counsel who was holding brief of the arguing Counsel, and he prayed for grant of three weeks time to file the counter. The same was granted and the matter was next posted for hearing on 23.04.2025. Relevant part of order dated 24.03.2025 is extracted hereunder:-

``CP(IB)/1/7/AMR/2025:

The Proxy Counsel for the CD appeared and sought three weeks time for filing reply to the main CP. At the request of the CD, three weeks' time is granted for filing the reply after duly serving the copy on the other side. Hence, the matter is listed for hearing on 23.04.2025.''

6. When the proceedings were taken upon 23.04.2025, the Counsel for the Corporate Debtor did not appear. Matter was posted to 26.05.2025, to enable Financial Creditor (FC) to provide certain clarifications. On 26.05.2025, both Financial Creditor and Corporate Debtor were present. FC was given two weeks time as a last opportunity to argue the case. CD neither filed the counter nor made any request for extension of time during the hearing. The matter was posted to 13.06.2025 as a last opportunity to FC to argue his case, failing which the matter will be decided on merit. On 13.06.2025, there was no representation on part of the CD / Appellant herein. After noting that there is no reply filed by the Corporate Debtor till date and there is no representation on behalf of the CD, either through Counsel or in person, Ld. Adjudicating Authority proceeded to forfeit the right of Corporate Debtor to file reply / counter affidavit and after hearing the arguments of FC, reserved the Company Petition for orders.

7. Being aggrieved against this order of 13.06.2025, the Appellant has filed a recall application on 02.07.2025 being IA (IBC) / 179 / 2025, on grounds that the notice was served on by e-mail and not by Registered Post, that he did not receive the e-mail, that Ld. NCLT during the hearing on 23.04.2025 and 26.05.2025 focussed on the certain discrepancies in the Company Petition and that it assured him that proper notice will be sent once the FC satisfies the Tribunal on the said discrepancies and that his Counsel misunderstood 13.06.2025 as 30.06.2025 and hence, could not appear for which he cannot be blamed and therefore, his opportunity to file a counter could not have been closed by the order of 13.06.2025.

8. It is seen that a contradictory stand has been taken by the Appellant in the recall application. On one hand, he submits, that a proxy Counsel did appear and sought time for filing of a counter affidavit and on the other hand, he claims that no proper notice was served on him and order was passed in his absence. The order sheets reflect that in two out of four sittings, CD's representative was present. Appellant claims that in three out of four sittings held before the Ld. Adjudicating Authority, except on 13.06.2025, he was represented through a Counsel. In such a scenario, neither filing reply nor seeking further time to file reply for a period of nearly 3 months from 24.03.2025 will have to be held against him especially when on 26.05.2025, Ld. Tribunal directed that a last opportunity is being given to the parties. The plea that his counsel mistook 13.06.2025 as 30.06.2025 cannot be taken as a ground to justify the Recall Application, to enable him to contest in the proceedings of CP (IB) No. 1 / 7 / AMR / 2025 on merits.

9. When the said Recall Application came up for consideration before the Ld. Adjudicating Authority on 10.07.2025, the Ld. Tribunal had already passed orders on 07.07.2025 in CP (IB) / 34 / 9 / AMR / 2021, directing commencement of CIRP in respect of the CD and appointment of IRP.

Therefore, Ld. Adjudicating Authority in its order dated 10.07.2025, held that, passing of an order on the Recall Application will be of no significance, because of the fact that the Corporate Debtor has already been placed into the CIRP process, and accordingly closed the proceedings in CP (IB) No. 1 / 7 / AMR / 2025 and as a consequence thereto, the application for recall was closed and as a consequence thereto, rejected the application for recall preferred by the appellant in IA (IBC) / 179 / 2025, holding it to be infructuous.

10. We will not hesitate to observe that, the Appellant was not fair to the Tribunal. The concept of issuance of notice in any judicial proceeding is only to impart knowledge to the opposite party to the proceedings in order to give him an effective opportunity to contest the same. The mode of service becomes an irrelevant issue when the opposite party already has the knowledge and he appears and participates in the proceedings. Participation in the proceedings itself would suffice the object of issuance of a notice in a judicial proceedings. In the present case, when Appellant on several occasions has sought to file the reply / counter affidavit as per his own Recall Application, mode of service cannot be taken as a ground to raise the allegation of not being given opportunity to contest the case.

11. In the instant case, the order of 31.01.2025 reflects that, there was a direction to issue notice and file compliance memo within 7 days. Subsequent order sheets reflect that, the Appellant's representative was participating in the proceedings and was granted time to file counter and that the Appellant has not availed the same till the passing of the impugned order dated 13.06.2025, by which his opportunity to file the counter affidavit was closed.

12. The Ld. Tribunal has not taken any action except for closing the opportunity. In the instant case, the Appellant himself has not availed the opportunity to contest the case, has instead taken the ground in the recall application that no notice was served upon him nor he was furnished with the

records of the CP (IB) No. 1 / 7 / AMR / 2025, which is contrary to the contents of the recall application itself as well as to the order sheet of the proceedings. Besides that, the logic which has been assigned by the Tribunal while passing the impugned order dismissing the CP (IB) No. 1 / 7 / AMR / 2025, holding it to be infructuous, owing to the order that, was passed in CP (IB) / 34 / 9 / AMR / 2021, does not suffer from any legal vices, because, once the CIRP process has already been initiated by appointment of the IRP in a parallel proceedings under Section 9 of I & B Code, 2016, there is no necessity of passing of any orders in CP (IB) No. 1 / 7 / AMR / 2025 on merits, because, there cannot be multiple CIRP process against the same Corporate Debtor.

13. Owing to the aforesaid reasons and particularly because of the orders, that were passed on CP (IB) No. 34 / 9 / AMR / 2021, rejection of the IA (IBC) / 179 / 2025 that was preferred by the Appellant in CP (IB) No. 1 / 7 / AMR / 2025, does not suffer from any vices as such to call for any interference by this Appellate Tribunal.

14. Hence, the Application i.e. IA (IBC) / 179 / 2025 has been rightly rejected and as a consequence thereto, the instant Company Appeal (AT) (CH) (INS) No. 430 / 2025, would too stand dismissed. All Interlocutory Applications would stand closed.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

SR/MS/RS