

NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH, COURT-IV

I.A. 5064/ND/2021

IN

C.P. No. IB 1105/ND/2020

Under Section 60(5) of the Insolvency and Bankruptcy Code,

2016 R/W Rule 11 of NCLT Rules 2016

IN THE MATTER OF:

Printland Digital (India) Pvt. Ltd.

G-9, Siddhartha Building,

96 Nehru Place, New Delhi 110019

....Applicant/Operational Creditor

Vs.

Nirmal Trading Company

Through Smt. Nirmal Kumari Kapoor (sole proprietor),

F-10/8A, Krishna Nagar, Delhi 110051

...Corporate Debtor

And

In the Matter of:

Nirmal Trading Company

Through Smt. Nirmal Kumari Kapoor (sole proprietor),

F-10/8A, Krishna Nagar, Delhi 110051

.... Applicant

Vs.

Printland Digital (India) Pvt. Ltd.

G-9, Siddhartha Building,

96 Nehru Place, New Delhi 110019

...Respondent

CORAM:

SH. DHARMINDER SINGH, HON'BLE MEMBER (JUDICIAL)

SMT. SUMITA PURKAYASTHA, HON'BLE MEMBER (TECHNICAL)

ORDER

Per: Sh. DHARMINDER SINGH, MEMBER (JUDICIAL)

In the present matter, IA-5064/ND/2021 has been filed on behalf of the respondent for seeking review of order dated 22.07.2021 and to grant opportunity to applicant/respondent to file its reply in the main IB i.e.



IB/1105/ND/2020, which is pending for consideration. In the present matter, Operational Creditor Smt. Nirmal Kumari Kapoor, is alleged to have connived with Mr. Kapil Kapoor, and the present proceeding have been initiated on fraudulent basis. Further, it is also submitted that due to their connivance, he could not fetch the documents, which were material in nature to give reply in the present matter accordingly, he could not file the reply. Apart from that, he had gone to U.P. during Covid wave for some roka and engagement ceremony and during this period the restrictions were also imposed by the U.P. Government on 30.03.2021. After the Covid wave, he joined the office on 09.08.2021, thereafter, on further verification, the invoices of the Operational Creditor were made available. Due to above said reasons, he could not file the reply in the present matter. Accordingly, prayed for acceptance of the present application.

Notice of the above said application was given, but the Ld. Counsel for the applicant did not prefer to file the reply and argued the same orally.

Ld. Counsel for the applicants reiterated the facts mentioned in the application and argued that this Tribunal has ample power to recall its own order as the order dated 22.07.2021 was on the procedural aspect and not on the merits of the case, therefore, he prayed for recalling the said order and to grant permission to the present applicant to file the written statement on record.

On the other hand Ld. Counsel for the petitioner vehemently contended that this Tribunal cannot review its own order and apart from that a number of opportunities were given to the present applicant/respondent to file the reply in the present matter, but despite



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that he failed to do so, accordingly, the right has been closed. In view of the fact that the proceeding under the IBC are to be completed within stipulated period prescribed under the Code, it was prayed that the application filed on behalf of the respondent herein be dismissed with costs.

Heard the arguments the record has been thoroughly perused. In the present matter, the respondent had appeared on 04.02.2021 and thereafter, matter was adjourned for 25.03.2021. On that day the respondent was directed to file the reply within two weeks.

On 25.03.2021, no one has appeared on behalf of the Respondent/Corporate Debtor. Even, the reply was not filed. Accordingly, the right to file the reply was closed and the order was to be fixed for 17.09.2021. On the said date, the Ld. Counsel for the Corporate Debtor appeared and stated that the reply could not be filed as one of his office colleagues tested Covid-19 positive and therefore, other colleagues including himself were quarantine. Though, no such record was placed on record, but even then, taking a lenient view, this Tribunal granted further 10 days time to file the reply. Despite that the reply was not filed on behalf of the respondent, even on the next date fixed i.e. 22.07.2021. Accordingly, the right to file the reply was closed. Hence, as per record sufficient opportunities were given to the respondent to file the reply, but the respondent kept on lingering the matter one pretext or other.

So far as, recalling of the order is concerned. This Tribunal is vested with no powers to recall or review its own orders once the specific findings have been recorded though qua the procedural aspects. This proposition also stand found supported from the law laid down in the matter of

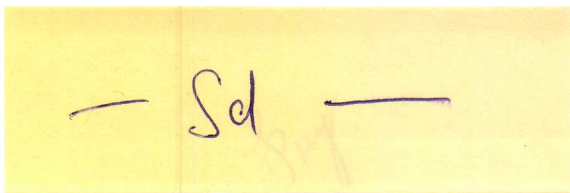


Aggrwal Coal Corporation Private Limited v. Sun Paper Mill Limited & Another, wherein Hcn'ble NCLAT, New Delhi, held that recalling of the judgment by the NCLAT is impermissible in law and the appropriate course of action open is to approach the Supreme Court against the judgment. The NCLAT, New Delhi noted that there is no express provision for 'review' under the NCLAT Rules, and that the applicant/appellant cannot fall back upon Rule 11 of the NCLAT Rules, which provides for 'inherent powers'. Hence this Tribunal has got no jurisdiction to review/recall its own order.

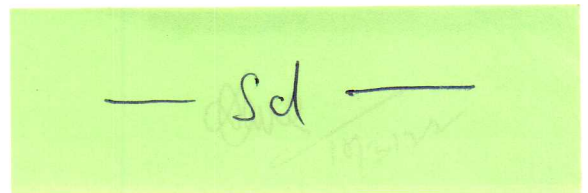
It is worthwhile to mention in these context that an application under IBC Code has to be decided within a stipulated period and the same cannot be lingered at the whims and wishes of the respondent who failed to file the reply despite giving number of opportunities. Therefore, this Tribunal is of view that the order dated 22.07.2021 cannot be recalled.

Accordingly, the present application being devoid of any merit **stands dismissed.**

Let the matter be fixed for arguments on **28.04.2022.**



**SUMITA PURKAYASTHA
MEMBER (TECHNICAL)**



**DHARMINDER SINGH
MEMBER (JUDICIAL)**