

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**JAIPUR BENCH**

**CORAM: SHRI DEEP CHANDRA JOSHI,**  
**HON'BLE JUDICIAL MEMBER**

**SHRI RAJEEV MEHROTRA,**  
**HON'BLE TECHNICAL MEMBER**

**IA (IBC) No. 118/JPR/2023**  
**In CP (IB) No. 275/9/JPR/2019**

**IN THE MATTER OF:**

**SANGAM (INDIA) LIMITED**

**...Operational Creditor**

**VERSUS**

**SUZUKI TEXTILE LIMITED**

**...Corporate Debtor**

**MEMO OF PARTIES**

**IA (IBC) No. 118/JPR/2023:**

**KAILASH CHAND JETHLIA**  
28, Shree Plaza, College Road,  
1/F of Jai Mandir Cinema,  
Beawar- 305901 (Rajasthan)

**...Applicant**

**VERSUS**

**MR. PRASHANT AGARWAL,**  
*Resolution Professional of Suzuki*  
*Textiles Limited*  
F-106, Sumer Complex, Gautam  
Marg, B/H Bagadia Bhawan, C-  
Scheme, Jaipur-302001

**...Respondent**

**FOR THE APPLICANT(S)**

**: Amol Vyas, Adv.**

**FOR THE RESPONDENT(S)**

**: Mr. Ankit Sareen, Adv.**

**Mr. Prashant Agarwal, *present in person***

**Order Pronounced On: 20.10.2023**

**ORDER****Per : Shri Deep Chandra Joshi, Judicial Member**

1. The present application bearing *IA (IBC) No. 118/JPR/2023* has been filed by *Mr. Kailash Chand Jethlia* under Section 60(5) of the Insolvency & Bankruptcy Code ('IBC'), 2016 for adjudication of the claim of the Applicant and directions to the Successful Resolution Applicant ('SRA') to make payment of the adjudicated amount.
2. It is seen that in the main matter, an Application was filed under Section 9 of the Code by *M/s Sangam (India) Limited* seeking initiation of CIRP of the Corporate Debtor namely *M/s Suzuki Textile Limited*. This Authority vide order dated 31.01.2022 admitted the said application and appointed *Mr. Prashant Agrawal* as the Interim Resolution Professional ('IRP'). Thereafter, the Committee of Creditors ('CoC') approved the Resolution Plan submitted by *M/s Sai Leela Synthetics Pvt. Ltd.* being the SRA, which was subsequently approved by this Adjudicating Authority on 18.01.2023. Subsequently, an *IA No. 296/JPR/2023* was filed seeking extension of the implementation period of Resolution Plan, the same was allowed vide order dated 12.10.2023.
3. The present application has been filed on the following set of facts:
  - 3.1. It is submitted by the Applicant that earlier an application was preferred numbered as *IA No. 581/JPR/2022* seeking adjudication of the claim of the Applicant and issuance of direction to the RP to admit the entire

amount of the claim including interest as per direction passed by the Comptroller Authority, Payment of Gratuity Act in the order dated 04.03.2021. The said application was disposed of vide order dated 18.01.2023 wherein the following was observed:

*“Since the SRA has already agreed to pay the claims during the course of hearing and the same has also been incorporated in the Resolution Plan as discussed in the Ninth CoC meeting, IA No. 401/JPR/2022, IA No. 510/JPR/2022, IA No. 581/JPR/2022 have become infructuous and hence stand disposed of accordingly.”*

- 3.2. It is submitted that as per the order dated 18.01.2023, the SRA had proposed to pay the Applicant a sum of Rs. 1,11,306/- with simple interest @ 12 % per annum from 19.11.2016. Firstly, the Adjudicating Authority did no adjudication and rather left it to the SRA to decide the amount payable to the Applicant which led to the SRA not providing the compound interest from 19.11.2016. The Comptroller Authority had passed an order stating that due amount of Rs. 1,11,306/- along with simple interest from 19.11.2016 till the date of payment @ 12 % per annum shall be paid to the Applicant. It was also mentioned in the order that upon default, compound interest shall be levied on the party.
- 3.3. While passing the order dated 18.01.2023, the Adjudicating Authority has not considered the fact that the Applicant was entitled to compound interest from 20.12.2016 till the date of payment. The Applicant has also claimed an amount of Rs. 8,80,000/- for the deferred increment

which was not been considered by the RP. Since the amount claimed by way of application *IA No. 581/JPR/2022* has not been adjudicated, hence the present application has been filed.

4. The reply to the said application has been filed by the Chairman of Monitoring Committee, i.e. the erstwhile RP, vide Diary No. 1314/2023 dated 25.04.2023 stating the following:

4.1. It has been contended that the Applicant has filed the instant application despite the order dated 18.01.2023 passed in the application numbered as *IA No. 581/JPR/2022*, seeking the same relief as sought earlier. The Applicant through way of this application is trying to seek either review of the order dated 18.01.2023 which is not permissible or trying to evade the procedure of filing the appeal against the Order dated 18.01.2023.

4.2. Without prejudice to the aforesaid, any and all the claims filed by the creditors stand crystallised and cannot be allowed to be amended under any circumstances. Moreover, the contents of the order dated 18.01.2023 have attained finality. Also it has been mentioned that the SRA has not been impleaded as the party in the present application. The Applicant is looking to alter/ modify the Resolution Plan which stands approved vide order dated 18.01.2023.

4.3. It is also contended that the Applicant had submitted its claim before the RP without providing any cogent proof in support of its entire claim.

Therefore, the RP had no option but to admit only that part of the claim which was supported by documents. Moreover, the Applicant vide its letter dated 13.07.2022 had admitted that there exists no document as such to support its entire claim. Admittedly, the claim of Rs. 1,11,306/- with simple interest @ 12 % from 19.11.2016 was proposed to be paid by the SRA in accordance with the proposal given by the SRA in the 9<sup>th</sup> CoC meeting. The Applicant has relied on the order dated 04.03.2021 passed by the Comptroller Authority, Payment of Gratuity, Bhilwara claiming an amount of Rs. 8,80,000 without any basis.

5. Written submissions have been preferred by the Applicant vide Diary No. 2407/2023 dated 05.10.2023 stating that the Applicant had earlier filed an Application under Section 9 of the Code against a sum payable in view of deferred increment of Rs. 8,80,000/- and Gratuity of Rs. 1,11,306 with interest. However, in view of the admission order dated 31.01.2022, the Applicant was directed to submit its claims to the concerned RP. The Applicant has also submitted that the amount of Rs. 8,80,000/- pertains to the deferred amount of 5 years increment the complete details and working of which, was supplied to the MD of the Corporate Debtor from time to time. The Applicant has also relied on certain letter to submit that in a personal meeting with the MD on 11.02.2018 acknowledgement of debt with the assertion that it could be paid right now due to stringent financial position was reflected. It also been stated that in the company of the Corporate Debtor

the major decisions were orally like an appointment of the Applicant on 08.11.1997. Further the Applicant has relied upon the Judgment of The Hon'ble High Court of Calcutta in *Empress of India Cotton Mills Co. Vs. Naffer Chunder Roy*, MANU/WB/0181/1898 and the judgment of the Hon'ble NCLAT in *Union Bank of India Vs. Dinkar T. Venkatasubramanian & Ors. CA (AT)(Ins) No. 729/2020 dated 25.05.2023*.

6. The written submissions filed on behalf of the Respondent vide Diary No. 2435/2023 dated 09.10.2023 state that the instant application has been filed with an intent to seek review of the order dated 18.01.2023 by virtue of the claim of the Applicant as ascertained in *IA No. 581/JPR/2022*. The Respondent has relied on the judgments of *SREI Infrastructure Finance Ltd. vs. Tuff Drilling Pvt. Ltd, Civil Appeal No. 1706 of 2023, decided on 17.03.2023* and *Union Bank of India Vs. Dinkar T. Venkatasubramanian & Ors. CA (AT)(Ins) No. 729/2020 dated 25.05.2023* to state that this authority is not vested with any power to review its own judgment. Also, reliance has been placed upon *Committee of Creditors of Essar Steel India Limited through Authorised Signatory vs. Satish Kumar Gupta, Civil Appeal No. 8766-67/ 2019* to state that a successful resolution applicant cannot suddenly be faced with undecided claims after the resolution plan has been accepted.
7. We have heard the Ld. Counsels for the parties and perused the averments made in the Application, Reply and Written Submissions along with the documents enclosed therein.

8. In the present Application, the Applicant is seeking adjudication of its claim of Rs. 9,91,936/- as mentioned in the Schedule Form D dated 05.04.2022 for which the *IA No. 581/JPR/2022* was also filed. At the time of passing of the order for the approval of the Resolution Plan dated 18.01.2023, this Authority rendered the Application numbered as *IA No. 581/JPR/2022* as infructuous as the SRA has already agreed to pay the claims during the course of hearing and the same has also been incorporated in the Resolution Plan. It seems that the present Application, numbered as *IA (IBC) No. 118/JPR/2023*, has been filed by the applicant seeking the same relief as sought under the *IA (IBC) No. 581/JPR/2023* which has already been rendered infructuous via Order dated 18.01.2023.
9. The Hon'ble NCLAT in the matter of *Union Bank of India Vs. Dinkar T. Venkatasubramanian & Ors. CA (AT)(Ins) No. 729/2020 dated 25.05.2023* has observed that *"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."* This Judgment has held that the Order passed by the three-member bench in *"Agarwal Coal Corporation Private Limited vs. Sun Paper Mill Limited & Anr"* does not lay down correct law. Further the following has been observed in the Order of the Hon'ble NCLAT:

*"20. ... .. 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 delivery 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. ... ..*

10. Bare perusal of the aforementioned Order reveals that while this Adjudicating Authority has the power to recall its order, it can be done only in cases of procedural error. The Order of the Hon'ble NCLAT has been upheld by the Hon'ble Supreme Court vide Order dated 31.07.2023. In the present matter, while the Applicant has filed the present Application seeking adjudication of the claim, it is apparent that the subject matter of the present Application and the Application filed earlier numbered as *IA (IBC) No. 581/JPR/2023*, which has been rendered infructuous by the Order dated 18.01.2023, is the same. Hence, entertaining this Application would imply review of the Order dated 18.01.2023.
11. It has very well been established by various authorities that this Adjudicating Authority has no powers to review an order and the recalling of an order can be done in cases of procedural error. Presently, there is no procedural error which occurred during the passing of the Order dated 18.01.2023. If the relief sought for in the Application is granted, it would amount to

adjudication upon the matter which has earlier been dealt with in the Order dated 18.01.2023.

12. Moreover, the Hon'ble High Court of Delhi in *Indian Oil Corporation Limited Vs. Arcelor Mittal Nippon Steel India Limited*, ARB.P. 102/2022 dated 10.10.2023 has laid down the following:

*“ 25. However, once the aforesaid process has been completed and the Resolution Plan comes to be approved, no fresh claims can be laid or enforced against the successful Resolution Applicant. The successful Resolution Applicant is only bound to meet the claims as may have been accepted and ultimately form part of the approved Resolution Plan. This issue assumes seminal importance since the successful Resolution Applicant cannot be left open to defend or oppose claims which are either not factored in the Resolution Plan nor can it be left to fend off actions that may be brought with respect to alleged or asserted dues of the corporate debtor which were not admitted. Taking any other position would clearly violate the clean and fresh slate doctrines which inform and imbue the resolution process under the IBC. The Supreme Court while alluding to the intent of the resolution process underlying the IBC had described this aspect as the “hydra headed monster” ... .. ”*

13. Therefore, in view of the foregoing, we are not inclined to grant the relief as sought for in the Application. Hence, this Application is rejected and disposed off.

**-Sd-**

**DEEP CHANDRA JOSHI,  
JUDICIAL MEMBER**

**-Sd-**

**RAJEEV MEHROTRA,  
TECHNICAL MEMBER**