



**NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court– I)
KOLKATA**

I.A. (IB) 158/KB/2023
In
C.P. (IB)275/KB/2018

*An application under section 420(2) of the Companies Act, 2013, read with
rule 154 and rule 11 of the National Company Law Tribunal Rules, 2016*

In the matter of:

Supriyo Rana

..... Financial Creditor

-versus-

Hahnemann Housing and Development Private Limited,

..... Corporate Debtor

And

In the matter of:

- 1. Kanchan Kumar Maji**
- 2. Sasthi Pada Maji**
- 3. Rabindra Nath Majumder**
- 4. Subha Maji**

.....Applicants

-versus-

**CS Anand Rao Korada, Liquidator of Hahnemann Housing and
Development Private Limited**

..... Respondent

Date of Pronouncement of the order: 23rd March 2023

Coram:

Smt. Bidisha Banerjee, Member (Judicial)

Shri Balraj Joshi, Member (Technical)



Appearances (via video conferencing/physical):

For the Applicant:

Mr. Ritoban Sarkar, Adv.

Ms. Madhuja Barman, Adv.

For the Liquidator:

Mr. Patita Paban Bishwal Adv.

Mr. Suranjana Chatterjee, Adv.

ORDER

Balraj Joshi, Member (Technical):

1. This Court convened through hybrid mode.
2. This is an interlocutory application under section 420(2) of the *of the Companies Act, 2013*, by **Kanchan Kumar Maji** and Others, filed against **CS Anand Korada**, the liquidator of Hahnemann Housing and Development Private Limited , seeking the following reliefs:
 - a. *An order be passed modifying the order dated 21st July 2022 by this Tribunal to include the names of the applicants Sasthi Pada Maji, Rabindranath Nath Majumdar and Subhas Maji along with the name of the application who has filed the present application;*
 - b. *Ad-interim orders; and*
 - c. *Such further and/or other orders as this Tribunal may deem it.*
3. **Submission on behalf of the Applicant:**
 - 3.1 The Applicant has submitted that an interlocutory application being I.A. no. 362/KB/2022 was filed by the Applicants herein praying for condonation of delay of approximately 1185 days and for allowing to submit fresh proof of claim to the Respondent so that their claim can be considered on merit.



- 3.2 The said interlocutory application was heard on 21st July 2022 and this Tribunal, after hearing the submissions of both the parties, passed an order condoning the delay of 1185 days and granted the opportunity to the applicant therein to file its claim afresh.
- 3.3 Accordingly, the the Applicant in I.A. No. 362/KB/2022 along-with other three applicants prepared the fresh proof of claim on 25.07.2022 and submitted it to the respondent. Along-with the proof of claim, the certified copy of the order was also submitted to the respondent.
- 3.4 In response to the email dated 25.07.2022 the Liquidator refused to accept the claim. It was stated that the name of applicant nos. 2 to 4 was not reflected in the order sheet and hence, the respondent will not be able to accept the proof of claims of the applicant nos. 2 to 4.
- 3.5 Pursuant to the mails received from the respondent, the applicant shared the copy of the application with the liquidator reflecting the fact that the applicant was authorised on behalf of the other three applicants to file the application for himself as well as the other 3 applicants. However, the Liquidator refused to believe the stand of the applicant.
- 3.6 It is stated that if the order is not interpreted in the right spirit of the facts of the present case, the applicants who are otherwise financially constrained would be met with irreparable loss and injury. It is also pertinent to mention that the period for concluding liquidation process is now extended to 06.03.2023, hence, if the names of the applicants are reflected in the order sheet at this juncture would not jeopardize the entire process.
- 3.7 The present application is being made with the sole purpose of including the names of the other three applicants i.c., Sasthi Pada Maji, Rabindra Nath Majumdar and Subhas Maji who were also part



of the appeal bearing no. 362/KB/2022 but their names do not find a mention in the order dated 21 July 2022.

4. **Analysis and Findings:**

- 4.1 Heard the Ld. Counsel on behalf of the Applicant and the Ld. Counsel for the Liquidator and perused the records.
- 4.2 The instant application has been filed under section 420(2) of the Companies Act, 2013, which provides that the Tribunal may, within two years from the date of passing an order, amend the said order passed by it, with the view to rectifying any mistake apparent from the record.
- 4.3 In this regard, we would like to refer to the decision of the Hon'ble National Company Law Appellate Tribunal (NCLAT) in the matter of ***Santosh Wasantrao Walokar and Ors. Vs. Vijay Kumar Iyer and Ors.***¹ wherein, while dealing with the question regarding Adjudicating Authority's power to modify its own order, the Hon'ble Appellate Tribunal has made the following observation:

“Accordingly, the NCLT does not have power to modify its own order but can only correct mistake apparent from the record. The Hon'ble Supreme Court has held in "Assistant Commissioner, Income Tax, Rajkot Vs. Saurashtra Kutch Stock Exchange Limited" that a patent, manifest and self-evident error which does not require elaborate discussion of evidence or argument to establish it, can be said to be an error apparent on the face of record and can be corrected. An error cannot be said to be apparent on the face of the recorded if one has to travel beyond the record to see whether the judgment is correct or not. An error apparent on the face of the record means an error which strikes on

¹ MANU/NL/0039/2020



mere looking and does not need long-drawn out process of reasoning on points where there may conceivably be two opinions. Such error should not require any extraneous matter to show its incorrectness. To put it differently, it should be so manifest and clear that no court would permit it to remain on record. This does not include the power to modify any substantial part of the judgment which determines rights of one party or the other.” (Para 30)

- 4.4 Considering the aforementioned judgment and the observation therein, it is clear that the NCLT cannot modify its own order unless there is a self-evident error, apparent of the face of the record.
- 4.5 The instant application has been filed with the objective of including the names of Applicant No. 2 to 4 in the order dated 21st July 2022 in I.A.(I.B.C) 362/KB/2022. However, on persusal of the application in I.A.(I.B.C) 362/KB/2022, it becomes clear that the said application does not contain the name of the said Applicants in the memo of parties. Going by rule 20(5) of the National Company Law Tribunal Rules, 2016, the name of the Applicant No. 2 to 4 needed to be mentioned in the beginning of the Appeal. Further, the reliefs sought in the said appeal also mention the single appellant i.e the appellant mentioned in the memo of parties of the said appeal.
- 4.6 It is noted that the vague, non-specific mention of certain other appellants being present on page no. 12 of the said application cannot be taken as the bedrock for maintaining the instant application.
- 4.7 It is clear from the aforesaid facts that the order passed in I.A.(I.B.C) 362/KB/2022 has been according to the reliefs sought in the said appeal, in favour of the party mentioned in the said appeal. As such, there is no error apparent on face of record and the Tribunal, in exercise of its power under section 420(2) of the *Companies Act, 2013*, cannot modify its order in the absence of the same. Further, in light of the



In the National Company Law Tribunal,
Kolkata Bench (Court- I)

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aforementioned judgment, it is also clear that the power under section 420(2) of the Companies Act, 2013 does not include the power to modify any substantial part of the judgment which determines rights of one party or the other.

4.8 In view of the above facts and circumstances, we are of the opinion that the instant application is not maintainable and reliefs sought in the instant application cannot be granted. Accordingly, the instant application ought to be rejected. At the same time, it is also noted that the liquidation process is still underway, as such an opportunity ought to be given to the Applicant No. 2-4 to file their claims.

4.9 **I.A.(IB) No. 158/KB/2022** is hereby *dismissed*. The Applicants herein are at liberty to file a fresh application for condonation of delay in filing their claims with the liquidator, provided that the liquidation proceedings have not culminated as yet.

5. List main **CP. No. 275/KB/2018** for reporting progress.
6. The registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
7. Certified Copy of this order may be issues, if applied for, upon compliance of all requisite formalities.

Balraj Joshi
Member (Technical)

Bididha Banerjee
Member (Judicial)

Suman M (LRA)

Signed this, on the 23rd day of March, 2023