

**NATIONAL COMPANY LAW TRIBUNAL  
SPECIAL BENCH –II, CHENNAI**

**SR. No. 1074/2020**

**In**

**CP/1000/2018**

*(filed under section 60(5) of the Insolvency and Bankruptcy Code, 2016  
read with relevant provisions of NCLT Rules, 2016)*

*In the matter of **Info-Drive Software Limited***

R. Jayanthilal  
New No. 15, Old No. 13,  
Diwan Rama Road, Chennai – 600 084

... Applicant

Versus

1. Ashwani Kumar Gupta  
Resolution Professional  
C-402, Cauvery Serenity,  
10/1-1, Raghavendra Extension  
Tumkur Road, Yashwantpur,  
Bangalore – 560 022
2. M/s. Info-drive Software Limited  
Crown Court, 6<sup>th</sup> Floor,  
Office No. 3, No. 128, Cathedral Road,  
Chennai – 600 086
3. Bhaskaran Rangarajan  
18066, Prestige Shantinikethan,  
Whitefield Road,  
Bangalore – 560 006

Order Pronounced on 9<sup>th</sup> September 2022

**COROM**

**BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)  
SAMEER KAKAR, MEMBER (TECHNICAL)**

*For Applicant : R. Jayanthilal, Party in Person*

**ORDER**

***Per: SAMEER KAKAR, MEMBER (TECHNICAL)***

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Under Consideration is an application filed by Mr. R.

Jayanthilal, shareholder of M/s. Info-Drive Software Limited under



section 60(5) of the Insolvency and Bankruptcy Code, 2016 seeking relief as follows;

- a) *Stay the CIRP Proceedings of the 2<sup>nd</sup> Respondent Company in CP/100/IB/2018*
- b) *Appoint an independent director that this Learned Tribunal deems fit to take over the management of the Company.*
- c) *Appoint the applicant as a director in the 2<sup>nd</sup> Respondent Company to protect the interest of the equity shareholders and pass such further orders and thus render justice.*

## **PRELUDE**

2. Originally CP/1000/IB/2018 was filed by one Mr. Bhaaskaran Rangarajan in the capacity of an Operational Creditor under section 9 of The Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC, 2016") against the Corporate Debtor viz., M/s. Info-Drive Software Limited on the ground that the Corporate Debtor has defaulted in paying a sum of Rs. 50,00,000/- (Rupees Fifty lakh only) for the Consultancy services said to have been provided by the Operational Creditor to the Corporate Debtor.

3. The Application referred above under section 9 of IBC, 2016 filed by the Operational Creditor was dismissed by this Adjudicating Authority vide order dated 14.03.2019. Thereafter an Appeal was preferred before the Hon'ble National Company Law Appellate Tribunal (NCLAT) by the Operational Creditor against the Order dated 14.03.2019 passed by this Adjudicating Authority, wherein the Hon'ble NCLAT set aside the order passed by this Adjudicating

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Authority with a direction to admit the application after necessary notice to the respondent (*so as to enable the respondent to pay the amount before the order of admission*).

5. Based upon the direction of Hon'ble NCLAT, this Adjudicating Authority after issuing notice to the respondent initiated Corporate Insolvency Resolution Process as against the Corporate Debtor in CP/1000/IB/2018 vide order dated 15.10.2019 by appointing one Mr. Nurani Subramanian Suryanarayanan as the Interim resolution Professional. Thereafter, Mr. Ashwani Kumar Gupta the 1<sup>st</sup> Respondent herein was appointed as the Resolution Professional.

#### **6. SR. No. 1074/2020**

The Applicant viz. R. Jayathilal, who claims to be a shareholder of the Corporate Debtor, has filed the present Application before this Adjudicating Authority on 20.10.2020 alleging that the CIRP initiated against the Corporate Debtor was triggered by fabricated evidences. The instant application was posted before this bench for maintainability by the Registry of this Tribunal.

After perusing the averments made in the Application and the relief sought thereof, this Tribunal informed the Applicant that the present Application is not maintainable in view of the fact that the CIRP order was initiated based upon the directions of Hon'ble NCLAT and further, this Tribunal does not have powers to review /

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recall its own orders. However, in spite of explaining the said legal position, the Applicant insisted on pursuing the present Application.

Considering the legal position of the instant matter and not venturing into the facts as pleaded, we are of the view that this Adjudicating Authority is not vested with any power to stay the CIRP proceedings or to review its own Adjudication. For which, we rely upon a decision of Hon'ble NCLAT, New Delhi in the case of CA (AT) (Ins) No. 271 of 2022 in which it has been held *that if there is an adjudication by the Adjudicating Authority on merits of the issues then it would not have the jurisdiction to review its order.* Further, In the matter of Agarwal Coal Corporation Private Limited, NCLAT, New Delhi I.A. No.265/2019 it has held that,

*Power to Recall*

*27. It is the well laid down proposition of law that 'in the absence of any power of 'Review' or 'Recall' vested with the 'Adjudicating Authority' - 'Appellate Authority', an order/ judgment passed by it cannot be either Reviewed or Recall as opined by this Tribunal.*

*28. ....*

*29. It is not in dispute that as against the judgment dated 16.10.2019 in Comp App (AT)(Ins) No.412/2019 (in the matter of Agarwal Coal Corporation Pvt Ltd V Sun Paper Ltd & Anr) passed by this "Appellate Tribunal" dismissing the Appeal, the Applicant/Appellant has not preferred an "Appeal" to the Hon'ble Supreme Court of India as per Section 62 of the I&B Code, 2016. Therefore, it is crystalline and clear that the judgment dated 16.10.2019 passed by this Tribunal in Comp.*

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*Appl. (AT)(Ins) No.412/2019 between the parties inter se has become 'conclusive', 'final' and 'binding'.*

30. ....

*31. It cannot be gainsaid that there is no express provision for "Review" under the National Company Law Appellate Tribunal Rules, 2016. Moreover, the Applicant/Appellant cannot fall back upon Rule 11 of the NCLAT Rules, 2016 which provides for "inherent powers". In fact, Rule 11 of NCLAT Rules, 2016 is not a substantive Rule which showers any power or jurisdiction upon IA No.265/2019 in Company Appeal (AT)(Insolvency) No.412/2019 12 the "Tribunal". Undoubtedly, the "Tribunal" has no power to perform an act which is prohibited by Law.*

*32. In view of the upshot, this Tribunal taking note of the prime fact that the Applicant/Appellant has sought for "recalling" the judgement dated 16.10.2019 passed by this Appellate Tribunal in Comp App (AT)(Ins) No.412/2019 etc., which is impermissible in Law and that this 'Tribunal' is of the earnest opinion that the appropriate course of action open to the Applicant / Appellant is to approach the Hon'ble Supreme Court of India as against the judgement in Comp App (AT)(Ins) No.412/2019 dated 16.10.2019 passed by this "Tribunal" if it so desires/ advised. Looking at from that perspective, the I.A. No.265/2019 in Comp App (AT)(Ins) No.412/2019 is devoid of merits and it fails.*

7. Further, after perusing the averments made in the Application it is seen that the Applicant is trying to regurgitate the issue which has already been decided by this Tribunal and it is also seen that the Applicant has also not preferred to file any appeal before NCLAT as against the order of admission passed by this Tribunal on 15.10.2019. However, the Applicant who has no locus

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to file the present Application is indirectly trying to stall the CIRP proceedings in respect of the Corporate Debtor.

In view of the reasons stated above we are inclined to dismiss the present Application and accordingly the present Application stands **dismissed**. Further, the present Application also entails imposition of costs on the Applicant for filing such frivolous Application and wasting the judicial time of this Tribunal and as such we impose a cost of Rs. 5000/- to be paid by the Applicant to the PM National relief Fund within a period of 7 days from the date of this order.

Post this matter on **16.09.2022** for compliance.

- Sd -

**SAMEER KAKAR**  
MEMBER (TECHNICAL)

- Sd -

**BACHU VENKAT BALRAM DAS**  
MEMBER (JUDICIAL)