

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI
(APPELLATE JURISDICTION)
COMPANY APPEAL (AT) (CH) (INS) NO.323/2025
IA No. 979 /2025

IN THE MATTER OF:

1. MR. ASHIQUE PONNAMPARAMBATH

(Former Managing Director of
M/s. Platino Classic Motors (India) Private Limited)
Residing at Ponnamparambath House, Konad Beach,
West Hill P.O., Kozhikode,
Kerala – 673 005

...APPELLANT

V

1. REUBEN GEORGE JOSEPH

M/s. Platino Classic Motors (India) Private Limited,
37/2038, 1st Floor, Muttathil lane,
Kodavanthra, Cochin,
Kerala – 682 020

...RESPONDENT

PRESENT :

For Appellant : Mr. Arjun Suresh & Ms. Aarthi Rao, Advocates

ORDER
(Hybrid Mode)

18.07.2025:

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

The Appellant in the instant Company Appeal questions, the Impugned Order dated 14.02.2025, as it was passed by the learned NCLT, Kochi Bench, in IA(IBC)27/KOB/2025, being a recall application, which has been preferred by the Appellant seeking a recall of the order dated 11.12.2024, while alleging it to have been preferred invoking Rule 11 to be read with Rule 32 of the NCLT Rules, 2016.

The ground, which has been agitated by the learned counsel for the Appellant while questioning the propriety of the impugned order, rejecting the recall application is that, when any proceedings vitiated by a fraud or is decided by a Tribunal which lacks jurisdiction to decide the matter, that will be falling well within the ambit of recall and the orders passed thereon could be subjected to recall by preferring of an application, under Rule 11 to be read with Rule 32 of the NCLT Rules, 2016, as a case at hand.

The learned counsel for the Appellant has further argued that, the recall of the order dated 11.12.2024 in IA/340/KOB/2023 became necessary owing to the fact that, the finding, which has been recorded therein, projects as if order has been passed by way of a consent, which is now a fact denied by Appellant. The learned counsel for the Appellant, in support of this contention for the purposes of examining the issue pertaining to the scope of the recall, has referred to a judgment reported in **(1999) Volume 4 SCC page 396** as settled in the matter of **Sri Budhia Swain & Ors vs Gopinath Deb & Ors**, and particularly, he has harped upon the observations, which has been laid down by the Hon'ble Apex Court in para 15 of the said judgment, which is extracted hereunder.

"15. No case was made out before the OEA Collector and the ADM for recalling the order of settlement dated 2-4-1966. The order did not suffer from lack of jurisdiction or from error of jurisdiction much less an inherent one. The High Court has

rightly set aside the order dated 2-2-1976 passed by the OEA Collector as the same was without jurisdiction. In passing the order dated 2-2-1976 the OEA Collector had exercised a jurisdiction which the law did not vest in him. The order could not have been sustained by the ADM in appeal. No fault can be found with the view taken by the High Court. The appeal is therefore dismissed though without any order as to the costs."

We are of the considered view that the aspect of jurisdiction or an aspect of a wrongful recording of a finding of a consent, that too in a proceedings in which Appellant had participated, are the aspects, which involves consideration of a mixed question of fact and law, which could only be tested when a party approaches to a forum, which enjoys the power of testing the evidence, to arrive at a conclusion, as to whether at all there was a fraud played upon or not, or whether the alleged findings of a consent given by the Appellant, which has been recorded in the order was a voluntary consent or it was under duress, for which appreciation of evidence becomes inevitable.

We are of the view that so far as the aforesaid two aspects on which the learned counsel for the Appellant has harped upon are concerned, when it entails an appreciation of evidence, before coming to a conclusion about the effect of jurisdiction or the effect of the consent in a proceedings in which Appellant has participated, as recorded therein, though not rightly interpreted

herein, will not fall to be within the scope of recall under Rule 11 to be read with Rule 32 of the NCLT Rules, 2016. Besides that, factually, the judgment of the Hon'ble Apex Court was based on altogether different grounds.

Thus, the rejection of the recall application by the Impugned Order doesn't suffer from any error as such, for the reason being that, the Appellant ought to have resorted to the appropriate recourse, that would have been available to him in accordance with law rather than filing of a recall application by extension of the ambit of a provision which itself is circumscribed by the language used under Rule 11 of the NCLT Rules, 2016, which confers the inherent powers on the Tribunal. It has certain preconditions, that is, when the exercise of inherent powers as conferred under any statute could be invoked, it does not include within itself a power to override a statutory provision or a field which is already covered under law. Inherent powers can only be utilized only to fill up the vacuums, which are prevailing in the given procedural law, but they cannot act as a substitute to the process of law, which could have been exercised by Appellate forum. In that eventuality, we are of the view that, the power of recall couldn't have been exercised under the given set of circumstances, where the Appellant accuses the impugned order of having been obtained by playing fraud and having been rendered without jurisdiction by a Tribunal, which didn't have jurisdiction, that too in a proceedings, where Appellant is party, and had

contested the proceedings, because in that eventuality, recall will take shape of a review, which is not permissible.

Owing to the aforesaid reasons, we don't find any merit in the Appeal; the same is accordingly dismissed, however, without prejudice, to the Appellant's right to resort to an appropriate remedy as available to him in accordance with law.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)