

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**MUMBAI BENCH COURT III**

**I.A. 1401/2021**

**I.A. 1431/2021**

**In**

**C.P. No. (IB) 512/MB/C-III/2019**

*(Under section 424 of the Companies Act, 2013 read with Rule 56 and Rule 57 of the National Company Law Tribunal Rules, 2016)*

Filed by

**I.A. 1401/2021**

**Mr. Indrajit Mukherjee**

Liquidator (DSK Motors Pvt. Ltd.)  
Flat No. 705 A Wing,  
Deep CHS, D N Nagar,  
Andheri (W), Mumbai- 400053

*...Applicant/Liquidator*

**Vs.**

**The Deputy Director,**

Directorate of Enforcement,  
(Prevention of Money Laundering Act)

*...Respondent*

**I.A. 1431/2021**

**Mr. Indrajit Mukherjee**

Liquidator (DSK Motors Pvt. Ltd.)  
Flat No. 705 A Wing,  
Deep CHS, D N Nagar,  
Andheri (W), Mumbai- 400053

*...Applicant/Liquidator*

**Vs.**

**1. The Deputy Secretary**

**Home Department of Government of Maharashtra**

Second Floor, Mantralay,  
Madam Kama Road,  
Hutatma Rajguru Square,  
Mumbai- 400032

*...Respondent No.1*

**2. The Sub Divisional Officer,**

Maval- Mulshi,  
**The Competent Authority**

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MUMBAI BENCH COURT III  
I.A. 1401/2021 & I.A. 1431/2021 In C.P. No. (IB) 512/MB/C-III/2019

**(as per MPID Act)**

New Administrative Building,  
2<sup>nd</sup> Floor, Opposite Vidhan Bhavan,  
Pune- 411001

...Respondent No.2

IN THE MATTER OF

**Opulent Auto Care Pvt Ltd** ... Petitioner/Operational Creditor

Vs

**DSK Motors Pvt. Ltd.** ... Respondent/Corporate Debtor

**Order pronounced on: 22<sup>nd</sup> December 2023**

**Coram:**

Hon'ble Ms. Lakshmi Gurung, Member (Judicial)

Hon'ble Shri Charanjeet Singh Gulati, Member (Technical)

**Appearances:**

For the Applicant: Mr. Nausher Kohli a/w. Ms. Suyesha  
Kakarla i/b. M/s. Apex Law Partners

For the Respondent: M. S. Bhardwaj, Adv.

**Per: Ms. Lakshmi Gurung, Member (Judicial)**

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**ORDER**

1. The above I.A.s are filed by the Liquidator of DSK Motors under section 424 of the Companies Act, 2013 read with Rule 56 and Rule 57 of the National Company Law Tribunal Rules, 2016, seeking following same reliefs in both the IAs:

a) That Order dated 2<sup>nd</sup> February 2021 be duly executed in favour of the Applicant at the earliest and accordingly, the Respondent be directed to release/vacate the attachment of all the assets

*and properties of the Corporate Debtor from Prevention of Money Laundering Adjudicating Authority to the Liquidator;*

- b) That, disciplinary proceedings be initiated, and any other appropriate action be taken against the Respondent for wilfully disobeying the Order dated 2<sup>nd</sup> February 2021 of this Tribunal;*
- c) For cost of the present Application.*

2. The Deputy Director, Enforcement Directorate (Respondent in IA 1401/2021) have attached certain properties of the Corporate Debtor vide provisional attachment order dated 14.02.2019 and subsequent attachment order dated 05.08.2019 pursuant to confirmation of provisional attachment by Adjudicating Authority, PMLA. The Corporate Debtor was admitted to CIRP on 09.04.2019 and Liquidation order was passed on 17.03.2020. The Applicant, being the Liquidator of the Corporate Debtor, had filed IA 1854/2020 praying for the release of the attached properties.
3. This Tribunal, by its Order dated 02.02.2021, directed the Enforcement Directorate, Respondent in IA 1401/2021, to release the assets so attached by the above-mentioned attachment orders. The Applicant had communicated the said Order on 24.02.2021 along with the list of assets and called upon the Respondents to comply with the same.
4. When the Applicants did not receive any reply from the Respondents, another Reminder Letter dated 15.05.2021 was sent. However, it is submitted that the Respondents did not comply with the Order dated 02.02.2021 passed by this Tribunal.
5. Therefore, the present applications no. IA 1401/2021 & 1431/2021 are filed seeking directions from this Tribunal to direct the Respondents to release the attachments on assets and properties of the Corporate Debtor and to hand-over the same to the Applicant i.e. the Liquidator as per the Tribunal's order dated 02.02.2021.

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6. We have heard the arguments made by the Ld. Counsel and perused the records.
7. The reliefs sought herein by the Liquidator are consequential to Order dated 02.02.2021 passed in IA 1854/2020.
8. However, the Enforcement Directorate, i.e. the Respondent herein, has filed an IA No. 1436/2021 praying for recall of the said order dated 02.02.2021.
9. Since we have passed a separate order in IA No. 1436/2021 setting aside the order dated 02.02.2021, therefore, the consequential reliefs sought by the Liquidator cannot be granted. Hence, the prayers sought in the applications are **rejected**.
10. Accordingly, the present applications are **dismissed as infructuous**.

**Sd/-**

**Charanjeet Singh Gulati**  
**Member (Technical)**

**Sd/-**

**Lakshmi Gurung**  
**Member (Judicial)**

Uma, LRA

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH  
COURT III**

**I.A. 1436/2021**

**In**

**C.P. No. (IB) 512/MB/C-III/2019**

*(Under Rule 49 of the National Company Law Tribunal Rules, 2016)*

Filed by

**Deputy Director**

Directorate of Enforcement, Mumbai Zonal Officer-II  
Kaiser-I-Hind Building, Ground Floor, Ballard Estate  
Mumbai, Maharashtra- 400001

*...Applicant*

**Vs.**

**1. Mr. Indrajit Mukherjee**

Liquidator (DSK Motors Private Limited)  
705 A Wing, Deep CHS,  
D N Nagar, Andheri (W), Mumbai- 400053

*...Respondent No.1/Liquidator*

**2. DSK Motors Private Limited**

326/2, Mumbai-Banglore Highway  
Bavdhan Pune, Maharashtra 411021

*...Respondent No.2*

**IN THE MATTER OF**

**Opulent Auto Care Pvt Ltd**

*... Petitioner/Operational Creditor*

**Vs**

**DSK Motors Pvt. Ltd.**

*... Respondent/Corporate Debtor*

**Order pronounced on: 22<sup>nd</sup> December 2023**

**Coram:**

Hon'ble Ms. Lakshmi Gurung, Member (Judicial)

Hon'ble Shri Charanjeet Singh Gulati, Member (Technical)

**Appearances:**

For the Applicant: M. S. Bhardwaj, Adv.

For the Respondent: Mr. Nausher Kohli a/w. Ms. Suyesha  
Kakarla i/b. M/s. Apex Law Partners

**Per: Ms. Lakshmi Gurung, Member (Judicial)**

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**ORDER**

1. The instant application is filed by the Directorate of Enforcement (**Applicant**) under Rule 49 of the National Company Law Tribunal Rules, 2016, seeking following reliefs;
  - a) *That the Ex-parte order dated 02.02.2021 may please be recalled and quashed and set aside;*
  - b) *That the impugned order 02.02.2021 may please be Reviewed and quashed and set aside and the said I.A. No.1854 of 2020 may please be heard on merits.*
2. The Applicant's submission is that the Adjudicating Authority passed the impugned order dated 02.02.2021 directing the Applicant to release the attachment of the assets of the Corporate Debtor M/s DSK Motors Pvt Ltd (In Liquidation) without hearing the applicant. Although the ED Counsel had tried to log in for virtual hearing (VC) on 02.02.2021, but was not admitted for VC and hence did not get the opportunity to file reply or to present the case orally. Thus there is violation of principle of natural justice and the impugned ex-parte order deserves to be set aside.

3. The Applicant thereafter made enquiries with their Counsel in New Delhi regarding the passing of the Impugned Order. Simultaneously, the Applicant initiated the process of filing the present application and after obtaining approval from the Headquarters, appointed Counsel in Mumbai for drafting and filing of the Application. However, in peculiar circumstances prevailing in the country due to second wave of Covid-19 Pandemic and several restrictions declared by State Government, the present application was prepared and finalised as expeditiously as possible.

**Background facts leading to filing of the present application**

4. The enquiries under the provisions of Prevention of Money Laundering Act, 2002 (PMLA) were initiated at Directorate of Enforcement, Mumbai Zonal Office-II, Mumbai by recording an ECIR/01/MBZO-II/2018 dated 08.03.2018 against *inter alia* DSK Group Companies/ Partnership firms and their Directors/ Officials and others.
5. The above ECIR was registered on the basis of three (03) FIRs viz. FIR No. 347/2017 dated 28.10.2017, FIR No. 373/2017 dated 09.11.2017 and FIR No. 309/2017 dated 03.11.2017 registered at local police stations in Pune, Kolhapur and Mumbai respectively against the accused, Shri Deepak Sakharam Kulkarni, Smt. Hemanti Deepak Kulkarni, Shri Shirish Deepak Kulkarni and DSK Group companies/firms invoking Sections 406, 420, 34 of IPC and Section 3 and 4 of Maharashtra Protection of Interests of Depositors (MPID) Act, 1999.

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6. Investigations were carried out and it was revealed that (1) Deepak S Kulkarni, Chairman and Managing Director of D S Kulkarni Developers Limited (DSKDL) and promoter of DSK Group, (2) Mrs Hemanti Deepak Kulkarni, Group President and Power of Attorney holder of DSKDL and Director/partner of DSK Group of Companies (3) Shirish D Kulkarni Executive Director of DSKDL and Director/partner in many DSK group of companies / firms, (4) other Promoters / Directors / Partners of DSK group of companies, with dishonest, fraudulent and common intention, formed eight partnership firms viz. (i) D S Kulkarni and Company, (ii) D S Kulkarni and Associates, (iii) DS Kulkarni and Brothers, (iv) DS Kulkarni & Sons, (v) DSK & Sons, (vi) DSK & Asso, (vii) DSK Construction and (viii) DSK Enterprises under the veil of DSKDL, with the sole motive to collect the funds from gullible public based in Mumbai, Pune, Kolhapur, and other cities of Maharashtra;
7. That although, the above eight partnership firms did not have any profit generating business, yet dishonestly induced the public and collected funds from them in the guise of different deposit schemes during the period from 2006 to 2017. As on 31.03.2017 the amount of Rs.1129.46 Crores is outstanding to the general public which is the Proceeds of Crime (POC) in the case.
8. The Enforcement Directorate issued the Provisional Attachment Order No. 1/2019 dated 14.02.2019, under section 5(1) of PMLA 2002; that further the properties valued at Rs.43470.29 Lakhs acquired/held by the DSK Group of Companies (including DSKDL) and their Promoters / Directors / Partners and other persons were also provisionally attached vide above said PAO

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dated 14.02.2019 under Section 5(1) of PMLA, 2002, which order has been confirmed by the Adjudicating Authority, PMLA vide its order dated 05.08.2019 in Original Complaint (OC) No. 1104/2019.

9. After confirmation of the PAO No. 01/2019 vide order dated 05.08.2019, the Enforcement Directorate took possession of the attached immovable properties on 20.08.2019 and that in respect of the movable properties, possession was taken by issuing directives to the respective Banks.
10. An Interlocutory Application No. 1854/2020 in CP (IB)-512(MB)/2019 was filed before this Tribunal by the Liquidator of the Corporate Debtor i.e. DSK Motors Pvt Ltd. with a prayer to direct the Appellant herein to release the attachment on all the assets and properties of the Corporate Debtor and handover the charge of the same to the Liquidator, which stood allowed by the impugned ex parte order 02.02.2021 and directed the Deputy Director, Directorate of Enforcement to release the attachment of the assets of the Corporate Debtor, M/s DSK Motors. As the said impugned order is in violation of principles of natural justice, the instant IA has been filed for setting aside the impugned order dated 02.02.2021.
11. Per contra, the Liquidator submitted that by an order dated 17<sup>th</sup> March 2020 passed by this Tribunal, he was appointed as the Liquidator of DSK Motors Pvt Ltd. The properties attached in the Provisional Order dated 14.02.2019 were mortgaged to various Banks and NBFCs which had provided finance to the Corporate Debtor. Unless the provisional attachment Order dated

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14.02.2019 and final Attachment order dated 05.08.2019 were withdrawn, the Liquidator could not proceed with the Liquidation process, which has to be completed in a time bound manner. Hence the Application IA 1854/2020 was filed before the Hon'ble and was allowed.

12. That the said IA No. 1854 of 2020 was served upon the Applicants on 10<sup>th</sup> October, 2020 and multiple opportunities were provided to the applicant to file a Reply and to argue the matter but the counsel for the applicant did not make any submissions nor sought time to file reply. The Applicant's allegation that they weren't provided any opportunity to be heard is misconceived and completely untrue. This Application is filed as an after-thought in order to cause undue delay in the proceedings.
13. The Respondent has contended that this Tribunal does not have power to review its order. As per section 420(2) of the Companies Act 2013, the Tribunal is only vested with the power to rectify any error apparent on record and the applicant has not brought to the notice any mistake apparent on record for this Hon'ble Tribunal to consider rectification. On the contrary the applicant is seeking a review of the order of this Tribunal when there is a provision for appeal under section 61 of the Insolvency & Bankruptcy Code, 2016 and this power cannot be exercised by the Tribunal under section 420 of the Companies Act, 2016. Further, the instant Review Application is filed beyond the permissible time period.

14. The Respondent has further contended that no valid ground has been cited for recall of the order and hence this prayer deserves to be dismissed. It is further submitted that NCLT Rule 49 under which the Applicant has filed the instant application is not maintainable for lack of jurisdiction as the Applicant should have approached the appropriate Authority that is the Hon'ble NCLAT.
15. In view of the above submissions it is submitted that this Tribunal may dismiss the present Application and issue appropriate directions to proceed with the sale of the assets of the Corporate Debtor.

### **FINDINGS/OBSERVATIONS**

16. Heard the Ld. Counsel appearing for the parties and perused the record.
17. The prayer 'b' in this application is seeking review and quashing and setting aside of impugned order dated 02.02.2021. The Respondent has relied on the judgments of Supreme Court in ***Lily Thomas vs. Union of India, AIR 2000 SC 1650, Patel Narshi Thakershi v. Pradyuman Singh Ji Arjun Singh AIR 1970 SC 1273, Budhia Swain and others vs. Gopinath Deb and others reported in (1999) 4 SCC 396***, judgment of CLB in ***Pushpa Katoch v Manu Mahararani Hotels Ltd (2001) 41 CLA 196 (CLB)***, and the decision in ***Proq Venture Advisors Pvt Ltd Vs ROC Mumbai*** to emphasis on the point that this Tribunal does not have review/recall power and the limited power is merely to rectify the mistakes apparent on the record, which is not the present case.

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18. The Respondent has further relied on the Judgement dated 24.09.2018 by Hon'ble NCLAT in **Dr. MA Subramanian & Ors. Vs. TS Shivakuamar & Ors** to drive the point that the inherent powers cannot be so invoked so as to confer on the Tribunal the power of review which has not been conferred by the legislature.
19. We are in complete agreement with the Respondent that this Tribunal does not have the review power. We also agree with the Respondent that there is no mistake apparent on the face of the record to warrant any rectification of the order.
20. However, the Applicant has, in prayer 'a' sought for recall of the impugned order dated 02.02.2021 passed in I.A. 1854/2020 filed by the Liquidator against the Directorate of Enforcement. Therefore, the issue in the instant IA 1436/2021 is whether or not this Tribunal is empowered with the power to recall the order under the facts and circumstances of the present case?
21. We would like to refer to section 424(2) which is reproduced below:

**"424.**

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*(2) The Tribunal and the Appellate Tribunal shall have, for the purposes of discharging their functions under this Act <sup>1</sup>[or under the Insolvency and Bankruptcy Code, 2016 (31 of 2016)], the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely: -*

*(a) summoning and enforcing the attendance of any person and examining him on oath;*

*(b) requiring the discovery and production of documents;*

*(c) receiving evidence on affidavits;*

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*(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or a copy of such record or document from any office;*

*(e) issuing commissions for the examination of witnesses or documents;*

*(f) dismissing a representation for default or deciding it *ex parte*;*

*(g) setting aside any order of dismissal of any representation for default or **any order passed by it ex parte**; and*

*(h) any other matter which may be prescribed.”*

Clause (g) above clearly empowers the Tribunal to set aside any order passed by it *ex parte*.

22. Reliance is also placed on judgment passed by the Hon'ble NCLAT consisting of a five-member Bench, in ***Union Bank of India (Erstwhile Corporation Bank) vs. Dinkar T. Venkatasubramanian & Ors. [I.A. No. 3961 of 2022 in Company Appeal (AT) (Ins.) No. 729 of 2020]***, wherein it has been held as under:

***“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 delivering the earlier judgment; for example; necessary party has not been served or*****

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***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.***

***(Emphasis Provided)***

Thus, undoubtedly, this Tribunal has the power to recall and set aside an *ex-parte* order.

23. We now proceed to examine whether a case is made out for recall of the order dated 02.02.2021 passed in IA 1854/2020. From the order sheets, we note the following sequence of events:

<b>Sr. No.</b>	<b>Date of Hearing</b>	<b>Order</b>
<b>IA 1854/2020 was filed on 07.10.2020</b>		
1	24.11.2020	Total 9 IAs/MAs including IA 1854/2020 were listed but the appearance of ED counsel is not recorded. No directions are issued in IA 1854/2020 for the Applicant.
2	03.12.2020	Total 9 IAs/MAs were listed including IA 1854/2020, however, neither the appearance of the Counsel for ED is recorded, nor any directions are given to the applicant.
3	19.01.2021	Total nine (9) IAs (including the instant IA) were listed. The appearance of the ED Counsel is not recorded.  Following order was passed on 19.01.2021:

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		<i>“Parties are directed to complete the pleadings in all the pending applications before the next date of hearing. List the matter on <b>02.02.2021.</b>”</i>
4	02.02.2021	<p>From the record it appears that IA 1854/2020 was taken up for hearing for the first time on 02.02.2021 and following order is passed:</p> <p><i>“None appeared for the Respondent despite service of notice. Heard the Counsel appearing for the liquidator in IA 1854/2020. IA 1854/2020 is allowed in terms of prayer clause ‘a’ directing Deputy Director, Directorate of Enforcement, to release the attachment against to release the attachment against the assets of the Corporate Debtor M/s DSK Motors Pvt. Ltd. (in Liquidation) more fully described in Exhibit ‘B’ to the above application.”</i></p>

24. From the above chart, it is clear that though various applications were listed together on 24.11.2020, 03.12.2020, and 19.01.2021 but no specific orders were passed in IA 1854/2020. The Applicant never got any opportunity to make any representation before the Tribunal. No substantial hearing took place on 24.11.2020, 03.12.2020 and 19.01.2021. The matter was effectively called for hearing for the first time on 02.02.2021. We are inclined to accept the submission of the applicant that the counsel was not admitted to VC hearing on 02.02.2021 as the appearance of ED counsel is not recorded 02.02.2021. It is mentioned in the order that none appeared for Respondent despite service of notice. We also cannot lose sight of the fact that this was the unfortunate period when the entire country was

struggling against the covid pandemic and just before onslaught of the dangerous second wave of covid. There have been instances when counsels are not admitted to VC. In the facts and circumstances of the present case the Applicant has explained sufficient reason for not being able to represent its case before the Adjudicating Authority.

25. It can be seen that the impugned order dated 02.02.2021 was passed ex-parte without affording sufficient opportunity to the Applicant to file reply or to represent its case before the Adjudicating Authority. We refer to the judgment dated 30.05.2022 in ***Printland Digital (India) Pvt. Ltd. v. Nirmal Trading Company, Company Appeal (AT) Insolvency No. 504 of 2022*** observed and held as follows: -

*“No doubt that the Adjudicating Authority has no jurisdiction to review its order after deciding a substantial issue but it has the jurisdiction to recall the order of the kind in dispute i.e. where the right to Reply was closed by an order on the ground that the opportunities granted were not availed. In this regard, we rely upon a decision of this Tribunal rendered 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 but insofar as the dispute with regard to right to file the Reply which is closed by an order, it certainly has the jurisdiction to recall it in terms of the Rule 11 of NCLT Rules, 2016.”*

26. Moreover, we observe that without giving reasons, the order has been passed for the releasing the properties of the Corporate Debtor, which were provisionally attached on 14.02.2019, prior to the initiation of corporate insolvency resolution process of the Corporate Debtor which commenced on 09.04.2019.

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27. For all the reasons discussed above, we are of the considered view that this is a fit case for recall of the order on the ground of violation of principle of natural justice. Therefore, we recall and set aside the order dated 02.02.2021 passed in IA 1854/2020 and direct the Applicant herein to file its reply in I.A. No. 1854 of 2020 within three weeks from the date of pronouncement of this order.
28. Accordingly, the instant IA 1436/2021 is **allowed** and stands **disposed of**.
29. List I.A. No. 1854 of 2020 for hearing on 05.02.2024.

**Sd/-**

**Charanjeet Singh Gulati**  
**Member (Technical)**

Uma, LRA

**Sd/-**

**Lakshmi Gurung**  
**Member (Judicial)**