IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

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

SHRI RAJEEV MEHROTRA,
HON'BLE TECHNICAL MEMBER

Cont. A No. 05/JPR/2022
In CP No. (IB)- 155/PB/2018

IN THE MATTER OF:

M/S ASSET RECONSTRUCTION COMPANY (INDIA) LTD.

...Operational Creditor/Applicant

Versus

M/S PARASRAMPURIA SYNTHETICS LTD.

...Corporate Debtor/Respondent

Cont. A No. 05/JPR/2022:

MEMO OF PARTIES

ASREC (INDIA) LTD.
917-918, Hemkunth Chambers,
89, Nehru Place, New Delhi-110019.

...Applicant

VERSUS

Mr. Rajesh Jhunhunwala
Liquidator of Parasrampuria Synthetics Limited
A/151, Ashit Apartment, HB
Gawde Marg, Juhu Koliwada Mumbai.

...Respondent

For the Applicant	:	Usha Singh, Adv.
For the Respondent	:	Vikas Jain, Adv.

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Amol Vyas, Adv.

Rajesh Jhunjhunwala, Liquidator in Person

Order Pronounced On: -30.11.2023

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. The present Application has been filed under Section 60 (5) read with section 52(5) of the Insolvency and Bankruptcy Code, 2016 and Rule 11 of the NCLT Rules, 2016 seeking following reliefs:

   a) *Modify the order 23.05.2022 to the limited extent to exclude the immovable property situated at Taluka Alibagh, District Raigad, Maharashtra and Silvasa in union territory of Dadra Nagar Haveli, from the liquidation process/Sale as going concern under liquidation proceeding;*
   b) *That pending hearing and final disposal of the present Application, this Hon'ble Adjudicating Authority be pleased to stay the effect, implementation and operation of the order dated 23.05.2022;*
   c) *Such order or further orders which this Hon'ble Adjudicating Authority deems fit and proper in the facts and circumstances of the case.*

2. The Adjudicating Authority *vide* Order dated 17.05.2018 commenced the CIRP of *M/s Parasrampuria Synthetics Limited* ('Applicant/Corporate Debtor') under Section 7 of the Insolvency and Bankruptcy Code, 2016 ('Code'/ 'IBC'). Thereafter, due to non-approval of the Resolution Plan by the Committee of Creditor ('CoC'), this Adjudicating Authority *vide* order dated 15.02.2019 initiated Liquidation proceedings against the Applicant

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herein. The order for Liquidation was challenged and the Hon'ble NCLAT dismissed the appeal with directions to the Liquidator.

3. Pursuant to the directions, the Liquidator scheduled the sale of the Liquidation estate by way of an auction but no bids were received. Thereafter, the Liquidator issued a Letter of Intent ('LOI') for the sale of the Corporate Debtor as a going concern. This Authority *vide* order dated 23.05.2022, unequivocally, declared *M/s Kautilya Industries Private Limited* ('KIPL') as the successful purchaser of the Applicant as a going concern. Consequently, the Corporate Debtor became an associate Company of KIPL.

4. The present Application has been filed by the Corporate Debtor seeking the abovesaid prayer on the following grounds:

   4.1 The present Application is filed by ASREC ('Applicant') for seeking modification in order dated 23.05.2022 to protect the interests with respect to the immovable property situated at Taluka Aligabh, District Raigad, Maharashtra and at Silvasa in the Union Territory of the Dadra Nagar Haveli. The said property is under charge of the Applicant and outside the liquidation process. Copy of the order dated 23.05.2022 is annexed as Annexure-A/1 of the Application.

   4.2 The Applicant has acquired the financial asset of the Corporate Debtor vide Assignment Agreement dated 27.06.2014 together with all its

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rights, title, interest and along with underlying securities etc. Pursuant to the said assignment, the Applicant had become *de-jure* secured creditor of the Corporate Debtor.

4.3 It is further stated that Ld. Debt Recovery Tribunal vide order dated 07.08.2013 allowed the original application no. 60 of 2006 filed wherein a recovery certificate no. 278 of 2013 was issued in favour of the assignor bank however in the meantime one of the Financial Creditor has filed CIRP proceeding against the Corporate Debtor and subsequently *vide* Order dated 17.05.2018 commenced the CIRP of the Corporate Debtor and the Respondent was appointed as Resolution professional and consequently appointed as Liquidator.

4.4 Accordingly, the Applicant has filed its claim in Form-C before the Resolution Professional as per the Regulation 8 of Insolvency and Bankruptcy Board of India (Insolvency Resolution process for Corporate Persons) Regulation, 2016 dated 01.06.2018 and subsequently filed Form-D dated 16.03.2019 in respect of the Liquidation Process.

4.5 The Applicant vide letter dated 13.08.2018 informed the Liquidator/Respondent herein that they have exclusive charge in alleged subject property and the same shall not form part of the liquidation estate. Thereafter it has been confirmed by the Respondent

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vide E-mail dated 03.09.2019. Copy of the letter dated 13.08.2018 and E-mail dated 03.09.2019 are annexed as Annexure-A/6 colly of the Application.

4.6 It is stated that the Applicant was not part of the Stakeholder meeting dated 18.08.2020 wherein it was decided that the business of the Corporate Debtor is to be sold as going concern. Copy of the meeting dated 18.08.2020 is annexed as Annexure-A/7 of the Application. The Applicant had never relinquished its right over the subjected property and has exclusive charge over the subjected properties under Section 52 of the Code, 2016. Therefore, the said properties cannot form part of liquidation estate.

5. The Respondent has filed its reply *vide* Dairy No. 2986/2022 dated 10.10.2022 submitting as below:

5.1 The Respondent states that it is settled preposition of law that modification, recall and review can be sought only by the parties of the case whereas in the present matter a third party is seeking for same which cannot be done per se.

5.2 Moreover, it is pertinent to note that this Adjudicating Authority has no power to review/recall of its orders under NCLT Rules, 2016. Further it submitted that the Applicant had participated in stakeholder meeting since the very inception of the matter in hand.

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5.3 The Respondent had received the directions from Hon'ble NCLAT that the Corporate Debtor should remain as a going concern and the Respondent has already started the work in view of Hon'ble NCLAT directions.

5.4 The Applicant has received the amount on pro-rata basis which was distributed among the stakeholders in accordance with their respective share due against the Corporate Debtor. The Applicant never raised any objection at that time while receiving the amount or its share in total dues.

5.5 It is submitted that the properties in question have never been a part of liquidation estate however the business of the Corporate Debtor has been sold as going concern, therefore all the assets of the Corporate Debtor were required to handed over to the purchaser in the view of the Judgement in the matter of *Visisth Services Limited Vs S.V. Ramani and Others 2022 SCC Online NCLAT 24*. The Applicant never objected to the decision being taken in the year 2019-2020, the said issue raised by the Applicant at a very later stage.

6. The Applicant has filed rejoinder to the reply filed by the Respondent *vide* Dairy no. 367/2023 dated 10.02.2023 and submitted the following:

6.1 The Applicant submitted that when there is a mistake apparent on the face of record that may be caused by the concealment or lack of

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knowledge then same would be cured in exercise of Rule 11 of NCLT Rules, 2016. The Applicant also relied on the Judgement of Hon'ble NCLAT in the matter of *Printland Digital (India) Pvt. Ltd. Vs Niramal Trading Company 2022 SCC Online NCLAT 297* it was held that:

"We have heard Counsel for the parties and perused the record. There is a difference between recalling of an order and review on merits of the issue decided by the Adjudicating Authority. 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."

6.2 The Applicant was under the impression that the Liquidator/Respondent would cast its duty of care and exercise its due diligence and not act in haste to sell the Corporate Debtor as a going concern.

6.3 The Applicant was not part of the meeting of the Committee of Creditors whereby the proposal to sell the Corporate Debtor as going concern was approved therefore could not avert to its queries or

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objections regarding it. Further the Applicant undertakes to refund the amount which has been received after distribution of the properties as and when the property is released.

7 We have heard the Ld. Counsels for the parties and perused the averments made in the Application, Reply and Rejoinder along with the documents enclosed therein.

8 In the present Application, the Applicant is seeking modification in order dated 23.05.2022 passed by this Adjudicating Authority wherein it was held that:

> *"The proposal of purchase of the Corporate Debtor as a going concern submitted by M/s Kautilya Industries Pvt. Ltd. dated 01.09.2020 is approved in accordance with the Insolvency and Bankruptcy Code, 2016 and relevant rules thereunder."*

The Corporate Debtor was sold as going concern under the relevant provisions of the Code, 2016. The Applicant herein seeking exclusion of the immovable property situated at Taluka Alibagh, District Raigad, Maharashtra and at Silvasa in the Union Territory of Dadra Nagar Haveli from the Liquidation Process/Sale as going concern.

9 We find that the Liquidator has complied with the due process to sell the assets of the Corporate Debtor. The process of sale of the business of the Corporate Debtor as going concern through private sale was rightly resorted. Moreover, it is an admitted fact that the Applicant has already received an amount

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towards the extinguishment of its claim. The Applicant has already received the amount distributed among the stakeholders on pro-rata basis. At this belated stage, if such types of applications are allowed it will affect the implementation of the Buyout Plan.

6 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. … … … .*

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7 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,

the Applicant has filed the present Application seeking modification in the order 23.05.2022 with respect to exclude the immovable property situated at Taluka Alibagh, District Raigad, Maharashtra and Silvasa in union territory of Dadra Nagar Haveli, from the liquidation process/Sale as going concern under liquidation proceeding. Hence, entertaining this Application would imply review of the Order dated 23.05.2022.

8 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 23.05.2022. 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 23.05.2022.

9 Moreover, the Liquidator/Respondent has distributed and proceeded with liquidation estate in terms of the Rules and Regulation of the Code, 2016. The process of sale of the business of the Corporate Debtor has been already resorted. Therefore, at this juncture allowing the prayers made by the

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Applicant would amount to undoing the liquidation process/sale as going concern.

10 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.

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DEEP CHANDRA JOSHI
(JUDICIAL MEMBER)

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RAJEEV MEHROTRA
(TECHNICAL MEMBER)