

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - II

IA No.1031/2023 in
IP No.8/2023 in
IA No.305 of 2023 in
CP(IB) No.372/7/HDB/2018
Under Rule 11 of NCLT Rules, 2016

In the matter of:

M/s. Earthin Projects Ltd,
In consortium with K. Ramachandra Rao
Transmission & Projects Pvt. Ltd.
D.No.1-1867-B, Velampalem,
Srikalahasthi (M) – 517 644,
Chitoor District

.... Applicant

Vs

1. Indu Projects Limited,
1009, Indu Fortune Fields,
13th Phase, KPHB Colony,
Hyderabad – 500 072.
2. Mr. Anup Kumar Singh,
H.No.162/D/702, Lake Gardens,
Kolkata, West Bengal – 700 045.

....Respondents

Date of order: 05.07.2023

CORAM:

Hon'ble Justice Smt. Telaprolu Rajani, Member (Judicial)

Hon'ble Sri Charan Singh, Member (Technical)

Counsels present:

For the Applicant : Ms. Sandhya Rani, Advocate
Mr. Avinash, Advocate

For the Respondents : Mr. S. Ravi, Senior Advocate
Mr. V.V.S.N. Raju, Advocate

Heard on : 28.06.2023

[PER: BENCH]
ORDER

1. This application is filed by the Applicant M/s. Earthin Projects Ltd, seeking to recall the Order dated 19.06.2023 in IP No.8 of 2023 in IA No.305 of 2023 in CP No.372/HDB/2018 and to defer the hearing of IA No.305 of 2023, pending disposal of the instant application.
2. At the outset, the 2nd prayer can be dismissed, since the hearing on the application is already concluded and it is reserved for Orders.
3. As regards the first prayer, the Counsel submits that, in the order sought to be recalled, at Para No.7, it was recorded that; the Counsel for the Respondent relied on the judgement of the Hon'ble NCLAT in the case of Vasan Health Care Pvt. Ltd. wherein it was held:

“Appellant being an Unsuccessful Resolution Applicant, has no ‘Locus’, to ‘assail’ a ‘Resolution Plan’ or its ‘implementation’, coupled with a candid fact that he is not a ‘Stakeholder’, as per Section 31(1) of the I & B Code, 2016, in relation to the ‘Corporate Debtor’, this ‘Tribunal’, without any haziness, holds that the Appellant is not an aggrieved person coming within the ambit of

Section 61(1) of the I & B Code, 2016, especially when he is not a privy to the Resolution Plan.”

4. He submits that the Applicant herein is not an Unsuccessful Resolution Applicant and he is in fact a Successful Resolution Applicant and hence, dismissing the application on the premise that the Applicant is an Unsuccessful Resolution Applicant and hence does not have locus, is erroneous.

5. As regards the jurisdiction of this Tribunal to recall its own Order, the Counsel relies on the judgement of the *Hon'ble Supreme Court in Civil Appeal No.955 of 1985 between Budhia Swain and Ors. Vs. Gopinath Deb and Ors, wherein, the Hon'ble Supreme Court observed as follows:*

“What is a power to recall? Inherent power to recall its own order vesting in tribunals or courts was noticed in Indian Bank Vs. M/s Satyam Fibres India Pvt. Ltd. 1996 (5) SCC 550. Vide para 23, this Court has held that the courts have inherent power to recall and set aside an order (i) obtained by fraud practised upon the Court, (ii) when the Court is misled by a party, or (iii) when the Court itself commits a mistake which prejudices a party. In A.R. Antulay Vs. R.S. Nayak & Anr. AIR 1988 SC 1531 (vide para 130), this Court has noticed motions to set aside judgments being permitted where (i) a judgment was rendered in ignorance of the fact that a necessary party had not been served at all and was

shown as served or in ignorance of the fact that a necessary party had died and the estate was not represented, (ii) a judgment was obtained by fraud, (iii) a party has had no notice and a decree was made against him and such party approaches the Court for setting aside the decision ex debito justitiae on proof of the fact that there was no service.”

6. The Counsel on the grounds 2 & 3 mentioned in the above judgement seeks this Tribunal to recall the Order. He contends that the Court was misled as regards the status of the Applicant as Unsuccessful Resolution Applicant which he is not.
7. The judgement of the *Hon'ble NCLAT in IA 3961 of 2022 in Company Appeal (AT) (Ins.) No. 729 of 2020 between Union Bank of India (Erstwhile Corporation Bank) Vs. Dinkar T. Venkatasubramanian & Ors*, was also relied upon in support of the contention that, this Tribunal has the power to recall its Order.
8. It can be seen that the *Hon'ble NCLAT* in the above mentioned judgement has held that, the judgements of the *Hon'ble Supreme Court* mentioned therein clearly lay down that there is

a distinction between review and recall. It is held that the power to review is not conferred upon this Tribunal, but power to recall its judgement 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. It was also observed that 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 the judgement. It was categorically held that the power to recall of a judgment can be exercised by this Tribunal, when any procedural error is committed in delivering the earlier judgement. Obviously, the error pointed is not a procedural error. But by relying on the 1st cited judgement rendered by the Hon'ble Supreme Court, he seeks for recall of the Order.

9. A look at the brief facts of the case as are necessary and relevant would be beneficial. At the outset it can be said that the term "unsuccessful" suits the applicant better than many. The Applicant nevertheless was a Successful Resolution Applicant, but he became unsuccessful in getting the Resolution Plan accepted due to his failure in fulfilling the

conditions under the Plan which is to pay the amount provided for under the Plan.

10. Due to his inability to pay the amount within the given time, the Applicant has sought for extension of time for payment which was granted by this Tribunal. Even after expiry of the said time period, he could not fulfil the condition. Hence, the Applicant moved another Application, seeking for further extension of 60 days time which was rejected, against which, an Appeal was preferred before the Hon'ble NCLAT and the Hon'ble NCLAT granted extension of 3 months during which period also, the Applicant could not pay the amount. Then, the Resolution Professional filed an IA, seeking fresh IRP which was allowed by this Tribunal against which also, an Appeal was preferred by the Applicant herein before the Hon'ble NCLAT and the Hon'ble NCLAT confirmed the Order passed by this Tribunal. Thereafter, the Applicant moved the Hon'ble Supreme Court and as submitted by the counsel, the case is pending before the Supreme Court.

11. After all these unsuccessful attempts made by the Applicant, he claims to be falling under the category of Successful Resolution Applicants by merely going on the technical interpretation that he became a Successful Resolution Applicant in the first instance which is a past story.

12. The Counsel could not satisfy us as to under what category, the Applicant who was once the Successful Resolution Applicant and could not fulfil the conditions of the Resolution Plan, would fall. The supreme court, in the above cited judgment, in fact used the term “unsuccessful resolution applicant” in respect of the resolution applicant who submitted his plan in response to the invitation and was in the fray. The applicant herein does not even fall under the definition of “unsuccessful resolution applicant” much less resolution applicant, since he did not submit any plan when invitation was made afresh. His grievance expressed through the counsel, at the time of arguments, as to what would happen to his earnest money, cannot be redressed by this tribunal in this application since it is beyond the scope of this application.

13. Hence, seeing no merits in the application, we dismiss the application, but not without observing that it is a frivolous application. We refrain from imposing costs, which this application deserves, out of mere sympathy, that he already sustained loss with regard to his earnest money and by considering this application as a desperate move. This application IA 1031/2023 is accordingly dismissed and disposed of.

Sd/-

**(CHARAN SINGH)
MEMBER (TECHNICAL)**

Sd/-

**(JUSTICE TELAPROLU RAJANI)
MEMBER (JUDICIAL)**

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