

NATIONAL COMPANY LAW APPELLATE TRIBUNAL**PRINCIPAL BENCH, NEW DELHI****Review Application No. 02 of 2020****in****Company Appeal (AT) (Insolvency) No. 550 of 2019****IN THE MATTER OF:****Mr. S.V. Ramasamy****...Applicant/Appellant.****Versus****Mr. S. Muthu Raju & Anr.****...Respondents.****Present:****For Appellant: Mr. Abhijeet Sinha and Ms. Aditi Sharma,
Advocates.****For Respondent: Mr. MV Mukunda, Liquidator
Mr. V. Chandrasekaran, R-2, Bank.****ORDER****(Virtual Mode)**

24.05.2021 Heard Mr. Abhijeet Sinha, Advocate for the Applicant who filed Review Application No. 02/2020 and Mr. M.V. Mukunda, Advocate for Respondent No. 1/Liquidator and Mr. V. Chandrasekaran, Advocate for Respondent No. 2-Bank.

2. This Application was filed as Review Application on 20th December, 2019 by the Applicant who had filed Company Appeal (AT) (Ins.) No. 550 of 2019. The Applicant/Original Appellant claimed to be promoter of Corporate Debtor-M/s. Swastik Spinners (India) Pvt. Ltd. It is stated that the Corporate Debtor is MSME Company. The Appeal was filed as the Ld. Adjudicating Authority (National Company Law Tribunal, Single Bench, Chennai) passed Orders of Liquidation and rejected the Application of the Appellant/Applicant. It is stated that the Applicant wanted directions to move under Section 12A

of Insolvency and Bankruptcy Code, 2016 (I&B Code, 2016 in short) which was disposed of as infructuous.

3. When the Appeal came up before this Tribunal on 26.09.2019 *inter alia* this Court had directed as under:

“In the circumstances, we allow the Appellant to pay total Rs. 7.30 crores in three instalments to Tamilnadu Mercantile Bank’. Appellant will deposit the sum of Rs. 2 crores by 30th November, 2019; another Rs. 2 crores by 31st January, 2020 and rest of the Rs. 3.30 crores by 31st March, 2020.

The ‘Resolution Professional’ / ‘Liquidator’ will charge fee @ Rs. 50,000/- P.M., the ‘Corporate Debtor’ being MSME and who will give the details of the cost incurred with supporting evidence to the Appellant, who will collate the same and pay the amount in terms of the fee as determined by us and the actual cost borne by the Liquidator / ‘Resolution Professional’ including the litigation expenses in three equal instalments i.e. by 30th November, 2019, 31st January, 2020 and 31st March, 2020.”

Thus, three instalments were fixed for payment to Bank and three instalments were fixed for fees and costs etc. for Liquidation.

4. On 3rd February, 2019, the Applicant filed I.A. No. 4009 of 2019 seeking modification to permit payment of first instalment by 31st January, 2020 with the second instalment. The Applicant claimed in paragraph 5 that he was unable to pay Rs. 2 Crores of first instalment which was fixed for 30th November, 2019 on account of difficulty in liquidating assets as available with the Applicant.

5. On 06th December, 2019 the record of proceeding of the Appeal show following Order:

“No payment has been made by the Appellant till date. The Liquidation proceedings will continue. The interim order passed on 26th September, 2019 stands vacated.

Learned counsel for the Appellant though accepts that the amount has not been deposited in terms of the earlier understanding but he states that the total amount will be paid by 31st January, 2020. However, such statement cannot be accepted as the Appellant has already failed to act in terms of the understanding.

In the circumstances, as the Appellant having failed to execute the undertaking, we direct ‘Mr. S. V. Ramasamy’ Appellant to appear before this Appellate Tribunal on the next date. Learned counsel for the Appellant will inform the Appellant failing which the appeal may be dismissed.

Post the case ‘for orders’ on 11th December, 2019.”

6. Subsequently, the matter came up before this Tribunal on 11th December, 2019 and following order was passed:

“It is informed that the appellant has not deposited Rs.2 crores agreed by him by 30.11.2019. As per earlier order dated 26.09.2019 Rs.2 crores more is to be deposited by 31st January, 2020.

2. On the last occasion learned counsel for appellant submitted that if some more time is allowed the appellant will pay the amount of instalment. For the said reasons we asked appellant, Mr. S.V. Ramasamy to remain present who is now present. When we asked whether the appellant is in a position to pay Rs. 2 crores by 31.01.2020 which was to be paid by 30.11.2019, we are informed that the appellant can pay only after liquidation of the assets. However, we are not inclined to accept appellants’ submissions. For the said reason we recall the order dated 26.09.2019 and dismiss the appeal.

Liquidator will proceed with the liquidation.”

7. Thereafter, the present Review Application was filed and the Applicant referred to the following portion of the Order dated 11th December, 2019:

*“:2... .. When we asked whether the appellant is in a position to pay Rs. 2 crores by 31.01.2020 which was to be paid by 30.11.2019, **we are informed that the appellant can only pay after liquidation of the assets.**”*

The Applicant claims in Review Application that such statement recorded in the Impugned Order was on account of inadvertent error/miscommunication.

8. The Learned Counsel for the Applicant has submitted that the Hon’ble Supreme Court in the matter of “State of Maharashtra Vs. Ramdas Srinivas Nayak (1982 (2) SCC 463) held in Paragraph 4 of the Judgment that statement of Judges to be contradicted by statements at the bar or by affidavit and other evidence would not be permissible and it would be appropriate that if the parties think that the Court has wrongly recorded, the party should call attention of the judges when the matter is still fresh.

9. It is argued that because of this the Applicant immediately filed Review Application 02/2020 seeking review and recall of Order dated 11th December, 2019 to rectify the factual error in recording the Appellant’s inability to pay the 2 crores by 31st January, 2020.

Section 420 (2) of the Companies Act, 2013 reads as under:

“Section 420(2)- The Tribunal may, at any time within two years from the date of the order, with a view to rectifying

any mistake apparent from the record, amend any order passed by it, and shall make such amendment, if the mistake is brought to its notice by the parties.”

There does not appear to be any specific provision as such of –Review in I.B.C or Companies Act. The above provision under Section 420 gives limited jurisdiction to this Tribunal to “rectify any mistake apparent from the record”. Considering what was recorded by this Tribunal in the Order dated 11th December, 2019 read with what the Applicant stated in Paragraph 5 of his I.A. No. 4009 of 2019, it cannot be said that there was any error in recording the statement by this Tribunal.

10. The Record shows that an opportunity was given to the Applicant which was not taken and subsequently the Order dismissing Appeal was passed.

11. The Learned Counsel for the Applicant submits that the Applicant is ready to immediately pay Rs. 7.30 Crores to the Respondent No. 2 for which Copy of the Demand Draft has been filed with I.A. sent electronically on 19th April, 2021.

12. According to us, when there is no error apparent on the record, we are functus officio to set aside the Order dated 11th December, 2019 and reopen the Appeal. Even otherwise, there is no word from the Applicant as to what he did with the other part of the Order dated 26.09.2019 which required payment of fees and costs etc. of the Liquidation also in three instalments as mentioned above.

13. From the above reasons, we do not find that there is any substance in entertaining this Application which has been filed as a Review Application.

For the reasons recorded above, we decline to entertain this Application filed as Review Application. The Application is dismissed.

14. Before parting we note that the Applicant has already moved Hon'ble High Court of Madras for stay of the auction proceedings which are going on. The Learned Counsel for the Liquidator has submitted that the auction had already been conducted and the matter is pending in the High Court.

[Justice A.I.S. Cheema]
The Officiating Chairperson

[Justice Venugopal M.]
Member (Judicial)

[Justice Jarat Kumar Jain]
Member (Judicial)

Basant B./md.