

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

**Review Application No. 04 of 2020 in
Comp. Appeal (AT) No.380 of 2018**

IN THE MATTER OF:

Shri Lalit Aggarwal

...Applicant

Versus

Shree Bihari Forgings Pvt. Ltd & Ors.

...Respondents

Present:

**For Appellant: Mr. Karan Luthra and Ms. Niyai Kolhi, Advocates for Review
Applicant.**

For Respondent:

O R D E R

04.03.2020 - Heard counsel for Lalit Aggarwal Review Applicant. This Company Appeal (AT) No. 380 of 2018 was decided by us along with Company Appeal (AT) No. 23 of 2019 vide judgment dated 22.01.2020.

2. The Review Application is filed on the following grounds:
- i. That there is an inconsistent finding in Paragraph 29 and 30 of the Judgment as in Para 29, there is a finding that the Applicant has not placed on record any Board Resolution before the NCLT and this Appellate Tribunal to establish that the shares were allotted as per law. Whereas in Para 30, there is a finding that the records of Respondent company were admittedly in the possession of Respondent No.2 (Pramod Goil). In view of this the Applicant cannot be faulted for not having produced the Board Resolution indicating the allotment of the shares.
 - ii. In Para 33 of the Judgment, there is a finding of this Tribunal that admittedly before 2008 Lalit Aggarwal (Applicant) being Director was in control of the company and has taken action in

such a manner that the Company has been mismanaged to the extent that it has lost its substratum. It is no one's case that the Applicant was in exclusive control of Respondent No.1 Company prior to 2008.

iii. Certain typographical errors have inadvertently crept in Paragraphs 22, 25, 30 and 31 of the Judgment.

3. Learned Counsel for the Applicant submits that these mistakes are apparent from the record. Therefore, it may be corrected.

4. Learned Counsel for the Applicant submits that this Tribunal exercising the power under sub-section 2 of Section 420 of the Companies Act, 2013 (in short Act) and powers under Rule 11 of the NCLAT Rules, 2016 i.e. inherent powers can rectify such mistakes. For this purpose, learned counsel for the Applicant placed reliance on the judgment passed by this Tribunal in the case of Dr. M.A.S. Subramanian & ors Vs. Mr.T.S.Sivakumar & Ors., on 24.09.2018 in Review Application No. 02 of 2018 in Company Appeal (AT) No. 12 of 2018.

5. After hearing the learned counsel for the Applicant, we have perused the impugned judgment. As the learned counsel for the Applicant relying on the judgment of this Tribunal in the case of Dr.M.A.S Subramanian & Ors (Supra). Therefore, we would like to refer the findings of that case which reads as under:

“9. Power of Review is not an inherent power. Reference can be made to the Judgment of Hon’ble Supreme Court in the matter of Assistant Commissioner, Income Tax, Rajkot Vs. Saurashtra kutch Stock Exchange Limited reported in (2008) 14 SCC 171. In that matter Hon’ble Supreme Court was considering a provision similarly worded as sub-section 2 of Section 420. Hon’ble Supreme Court in para 30 of the Judgment observed as under:”

“30. In our judgment, therefore, a patent, manifest and self-evident error which does not require elaborate discussion of evidence or agreement to establish it, can be said to be an error apparent on the face of the record and can be corrected while exercising certiorari jurisdiction. An error cannot be said to be apparent on the face of the record if one has to travel beyond the record to see whether the judgment is correct or not. An error apparent on the face of the record means an error which strikes on mere looking and does not need long-drawn-out process of reasoning on points where there may conceivably be two opinions. Such error should not require any extraneous matter to show its incorrectness. To put it differently, it should be so manifest and clear that no court would permit it to remain on record. If the view accepted by the court in the original judgment is one of the possible views, the case cannot be said to be covered by an error apparent on the face of the record.”

6. While exercising the inherent powers under Rule 11 of NCLAT Rules, 2016 only typographical errors can be corrected an error which requires elaborate discussion of the evidence cannot be said to be apparent on the face of record. So far as the findings in Paras 29, 30 & 33 of the impugned judgment are concerned, these requires elaborate discussion of the evidence and arguments. Therefore, this is beyond the scope of review.

7. In such circumstances, we are of the view that this Tribunal can only correct typographical errors which inadvertently crept in the impugned judgment.

8. In Judgment Para 22, 3rd Line, learned Arbitrator be read as learned “Administrator.” In para 25, 2nd line, with the Auditor be read as “Administrator.” In para 30, 2nd line Respondent No.2 lodged police complaint be read as “Appellant (Pramod Goil) lodged police complaint.” In

para 31, the conduct of Respondent No.2 is not up to the mark be read as “Appellant (Pramod Goil) is not upto the mark.”

9. Thus, we have allowed the application only for correction of the typographical error in the impugned judgment. Copy of this order be kept along with the Company Appeal (AT) No. 380 of 2018 & Company Appeal (AT) No. 23 of 2019. Hence, the Review Application is partly allowed.

[Justice Mr. Jarat Kumar Jain]
Member (Judicial)

[Mr. Balvinder Singh]
Member (Technical)

[Dr. Ashok Kumar Mishra]
Member (Technical)

RK/ Kam/